

1 IN THE UNITED STATES DISTRICT COURT

2 FOR THE DISTRICT OF NEW MEXICO

3 UNITED STATES OF AMERICA,

4 Plaintiff,

5 VS. CR. NO. 15-4268 JB

6 ANGEL DELEON, et al.,

7 Defendants.

8 VOLUME 2

9 Transcript of James Hearing and  
10 Daubert/Rodriguez Hearing Proceedings before  
The Honorable James O. Browning, United States  
District Judge, Las Cruces, Dona County, New Mexico,  
11 commencing on November 28, 2017.

12 For the Government: Ms. Maria Armijo; Mr. Randy  
13 Castellano; Mr. Matthew Beck

14 For the Defendants: Mr. Brock Benjamin, Mr. Richard  
Sindel; Ms. Cori Harbour-Valdez; Mr. Patrick Burke;  
15 Mr. Jim Castle; Mr. Robert Cooper; Mr. James Lahann;  
Mr. Orlando Mondragon; Mr. John Granberg; Mr. Scott  
16 Davidson; Ms. Amy Jacks; Mr. Richard Jewkes; Mr. Marc  
Lowry; Ms. Theresa Duncan; Ms. Amy Sirignano; Mr.  
17 Christopher Adams; Mr. Michael Davis; Ms. Carey  
Bhalla; Mr. Ryan Villa; Mr. Donovan Roberts; Ms.  
18 Angela Arellanes; Mr. Samuel Winder

19 For the Defendants (Via telephone): Ms. Justine  
20 Fox-Young

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1                   THE COURT: Good morning everyone. I  
2 appreciate everyone making themselves available to me  
3 this morning.

4                   Hey, we had a little trouble getting in  
5 this morning. So I know tensions are going to run  
6 high with what we're having to go through and that  
7 we're having to listen to. I know we're getting 61  
8 days away from trial. Everybody is getting a little  
9 cranky, anxious, overworked, nobody likes to be here  
10 eight hours a day or more. But we've got to work  
11 together. We've got to work with the marshals.  
12 We've got to transport people, got to work with the  
13 Court. It's getting harder on all of us if we can't  
14 get people in and out quickly. So, gentlemen, just  
15 be cooperative with the marshals as they move you in  
16 and out. Try to keep your emotions under control.

17                  Counsel, speak to your clients. This is  
18 part of it, we've got to move in and out so we don't  
19 lose 15, 20 minutes every day. This is a lot later  
20 than I usually start court. Most days I start 8:30.  
21 And they made a concession to marshals on transport;  
22 we'll start at 9:00. See, we're starting at 9:20.  
23 So we've got to work harder to move in and out. And  
24 everybody sort of keep their emotions under control.  
25 So everybody work real hard to do that. It's going

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1 to be harder as we get closer to trial. They don't  
2 call it a trial for nothing. It's a hard thing. But  
3 we've got to work together to make sure it happens.

4 All right. I'm ready to resume the James  
5 hearing.

6 I understand Ms. Armijo wants to discuss  
7 scheduling before we resume the James hearing?

8 MS. ARMIJO: Yes, we did.

9 THE COURT: All right. Ms. Armijo.

10 MR. BECK: So, Your Honor, after we talked  
11 about the Daubert motions yesterday, the witnesses  
12 aren't available on short notice to get here either  
13 today or tomorrow. I'm fairly confident we may have  
14 enough material, since we're going to go through the  
15 Daubert hearing with two of our gang experts, that  
16 we'll have enough material to go through Wednesday.  
17 So we would like to schedule the Daubert hearings for  
18 at least Ms. Smith and Mr. Chavez, I think the  
19 Daubert hearing that Mr. Garcia was requesting for  
20 further down the road. And then Dr. Zumwalt, I  
21 think, to the extent that a Daubert hearing is  
22 required for Dr. Zumwalt -- and my understanding is  
23 they're requesting one -- I think that can be put on  
24 the back burner since that relates to counts in the  
25 second trial, not this trial.

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1           THE COURT: Ms. Wild, do you have any  
2 thoughts on that? Does that sound doable from a  
3 scheduling standpoint, Ms. Wild?

4           MR. VILLA: Your Honor?

5           THE COURT: Hold on.

6           THE CLERK: Judge?

7           THE COURT: Yes.

8           THE CLERK: Can you hear me?

9           THE COURT: Yeah. From a scheduling  
10 standpoint, does that sound like it works?

11           THE CLERK: Let me look at a few things.  
12 I've got communications coming in from other folks  
13 about shuffling some things around. So let me look  
14 at it. It would be helpful if folks can give me some  
15 kind of a time estimate as to how long they think  
16 they're going to need to get this Daubert hearing  
17 done.

18           THE COURT: Well, without responding  
19 whether that's okay, let's just kick it down the road  
20 a little bit, and see how today goes. And then we'll  
21 see where we are as the two days develop.

22           MR. BECK: That sounds fair.

23           THE COURT: All right. Thank you, Mr.  
24 Beck.

25           Mr. Villa?

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1                   MR. VILLA: I was going to tell you that  
2 Ms. Fox-Young couldn't hear you, so I thought maybe  
3 that was what was going on.

4                   THE COURT: Can you hear us now, Ms.  
5 Fox-Young?

6                   MS. FOX-YOUNG: Yes, Your Honor.

7                   THE COURT: Ms. Sirignano?

8                   MS. SIRIGNANO: Your Honor, I just would  
9 ask that -- I appreciate what the Government is  
10 trying to do here with getting these experts in from  
11 Quantico. My request would be to just try and get it  
12 set up before Christmas, with the dates that we have  
13 already calendared for the hearings. That's just our  
14 request.

15                  THE COURT: Well, I'm sure Ms. Wild can  
16 hear you. Communicate that to her, talk to Mr. Beck.  
17 I probably can't, you know, realistically sort all  
18 that out this morning. So we'll just -- you talk to  
19 the Government, talk to Ms. Wild, and bring it up  
20 before we leave here tomorrow.

21                  MS. SIRIGNANO: Thank you, Your Honor.

22                  THE COURT: All right. Thank you,  
23 Ms. Sirignano.

24                  All right. Mr. Acee, if you'll return to  
25 the witness box. Mr. Acee, I'll remind you that

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1 you're still under oath.

2 Ms. Jacks, did you have some further  
3 questions overnight?

4 MS. JACKS: I actually don't.

5 THE COURT: Really? Okay.

6 Ms. Sirignano, are you up next? Mr. Adams?

7 MS. SIRIGNANO: Mr. Adams is.

8 THE COURT: All right. Mr. Adams.

9 EXAMINATION

10 BY MR. ADAMS:

11 Q. So you made one reference, I think, Special  
12 Agent Acee, to statements attributed to Chris Garcia?

13 A. I think that's correct.

14 Q. And that was only in relation to statements  
15 communicated to you by Timothy Martinez?

16 A. Yes.

17 Q. And did you give that full statement in  
18 your direct?

19 A. I think I read from my report. I think I  
20 did.

21 Q. And that was your report which you handed  
22 over to us for us to be able to look at?

23 A. Yes, sir.

24 Q. And there were three reports related to  
25 statements made by Timothy Martinez?

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1 A. Yes.

2 Q. To law enforcement?

3 A. Yes.

4 Q. And which report were the Chris Garcia  
5 references in?

6 A. They're on page 3 of the January 26, 2017  
7 meeting with Tim Martinez.

8 Q. What number meetings or debriefings was  
9 that for Mr. Martinez?

10 A. I think that was the third one. Yes, the  
11 third one.

12 Q. Had Mr. Garcia been referenced prior to  
13 that?

14 A. I don't think so, because we primarily  
15 covered the Molina murder.

16 Q. What was the context in which the  
17 statements being attributed to Mr. Garcia came up?

18 A. Well, I usually follow a format in the  
19 debriefs. And so one of the standard questions I ask  
20 is about the Shane Dix homicide. I also ask about  
21 other members. And then I ask about the defendants  
22 that either haven't cooperated or haven't entered a  
23 plea. And so in covering that format, that's how  
24 Mr. Garcia came up.

25 Q. So you would just run through a list of

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1 people who still had active cases?

2 A. Yes.

3 Q. And you said: What do you know about Chris  
4 Garcia?

5 A. No, that's a little too broad. I generally  
6 ask if -- with regard to Mr. Garcia, I usually ask  
7 what they think of him, what they know about him,  
8 whether or not they had any interactions with him,  
9 with drugs, and if they knew anything about the Shane  
10 Dix homicide, or any other useful material in our  
11 investigation.

12 Q. And what -- who was present when you had  
13 this conversation with Timothy Martinez?

14 A. So this third conversation took place here  
15 at this courthouse when Mr. Martinez pled, and his  
16 attorney notified me that Mr. Martinez wanted to  
17 speak with me. So I joined Mr. Almanza in visiting  
18 with his client down in the attorney-client room, so  
19 it was the three of us.

20 Q. After the plea?

21 A. Yes.

22 Q. And that's when he told you that he had had  
23 conversations with Chris Garcia at Otero?

24 A. He told me -- he started off by clarifying  
25 some details of his earlier debrief. And then the

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1 conversation kind of followed in a chronological  
2 order as reported, as documented in my 302. So he  
3 walked away from the first debrief like a lot of the  
4 guys will do. And then he'll, at the second debrief,  
5 he'll produce a note either out of his sock or his  
6 attorney will provide it to me of other stuff they  
7 went back after the first debrief and thought of. So  
8 that's what took place at this third debrief.

9 Q. A note from the sock, or a note from --

10 A. I think he pulled a -- yeah, he pulled a  
11 piece of paper out of his sock or his shoe. And that  
12 was material that he wanted to cover. So he had  
13 organized his own notes, so --

14 Q. And was Chris Garcia and this alleged Otero  
15 conversation on that list?

16 A. That was one of the things that he covered,  
17 yes.

18 Q. And it was one of the things referenced  
19 specifically on his list from the sock, or wherever?

20 A. Yes.

21 Q. And do you have that note?

22 A. I don't think I do. I think his attorney  
23 kept it.

24 Q. So let's talk about this alleged  
25 communication out in the prison yard. Where was this

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1 supposed to have occurred?

2 A. At the Otero prison facility when all the  
3 defendants were there.

4 Q. Out in the rec yard?

5 A. Yes.

6 Q. When?

7 A. Well, I understood it to mean when we  
8 initially arrested everyone, they went to MDC up in  
9 Bernalillo County. From there, they went down to  
10 Otero. So within a few days to maybe about a  
11 week-and-a-half of the December arrest. And then  
12 from that point, the marshals disbursed the  
13 defendants to different facilities. So I don't have  
14 an exact date, and I don't think Mr. Martinez did  
15 either.

16 Q. Who else was around for this conversation?

17 A. It was just the two of them.

18 Q. Were other people out in the yard?

19 A. Yes.

20 Q. Who else would have seen these two  
21 gentleman talking privately with each other?

22 A. Perhaps some of the gentlemen here today.  
23 The defendants were housed together and would -- my  
24 understanding is they would -- initially they rec'd  
25 together.

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1           Q.     Do you have any corroboration of that other  
2 than what Mr. Martinez told you?

3           A.     I don't.

4           Q.     No video of the yard?

5           A.     No.

6           Q.     No logs showing them out in the yard  
7 together at the same time?

8           A.     No.

9           Q.     Did you attempt to get any corroboration of  
10 this alleged communication?

11          A.     No.

12          Q.     How much time passed between the alleged  
13 communication and when it was reported to you?

14          A.     A little over a year.

15          Q.     And is that the only hearsay-type statement  
16 related by Mr. Martinez regarding Mr. Garcia, the one  
17 you went through on your direct examination  
18 yesterday?

19          A.     I believe so.

20          Q.     You read from Mr. Martinez' third 302?

21          A.     I believe so.

22          Q.     And all those statements were clearly after  
23 the conclusion of the incident related to Mr.  
24 Marcantel, correct, 13 months after the arrest?

25          A.     Yes.

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1 MR. ADAMS: May I have the Court's  
2 indulgence?

3 THE COURT: Certainly.

4 MR. ADAMS: Thank you. Nothing further.

THE COURT: Thank you, Mr. Adams.

6                       Anyone else want to question Mr. Acee on  
7 the Molina side? Mr. Villa?

8 MR. VILLA: Thank you, Your Honor.

9 MR. CASTELLANO: Your Honor, Mr. Villa  
10 questioned Agent Acee yesterday. Is he getting a  
11 second shot?

12                   THE COURT: Yes, he did. But given that  
13 the defendants may not always have the same  
14 interests, I probably am going to be a little bit  
15 generous, liberal, to the defendants, to make sure  
16 they exhaust their questions before I turn it back  
17 over for redirect. So Mr. Villa.

18 MR. VILLA: And I appreciate that, Your  
19 Honor. As the Court recalls, I didn't get an  
20 opportunity to review Agent Acee's notes as I began  
21 his cross-examination. So I think I had reserved in  
22 order to do this.

## EXAMINATION

24 BY MR. VILLA:

Q. Agent Acee, I just want to back up a little

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1       bit. You talked about the December arrests; correct?

2           A. Yes.

3           Q. Those arrests were made following the first  
4 indictment in this case?

5           A. Correct.

6           Q. And Mr. Perez was not included in that  
7 first indictment; true?

8           A. True.

9           Q. He wasn't arrested in December on any other  
10 basis by you?

11           MR. CASTELLANO: Objection, relevance.

12           THE COURT: Overruled.

13           A. No, he was not.

14           Q. Or anybody under your direction?

15           A. No.

16           Q. And, in fact, he was not charged in this  
17 case until the first superseding indictment, which  
18 occurred in approximately April of 2016?

19           A. That's right.

20           Q. So let me take you back. I had asked you,  
21 when I first examined you yesterday, about statements  
22 Mr. Martinez made during his debrief to you relative  
23 to the wheelchair program. Do you remember that?

24           A. Yes.

25           Q. And I think you testified that you didn't

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1 recall exactly what Mr. Martinez had said. I might  
2 be a little bit off about what you said yesterday.  
3 Does that sound right?

4 A. I don't remember that part of our  
5 conversation, but --

6 Q. Let me ask you this: Isn't it true that  
7 Mr. Martinez told you that at the Southern New Mexico  
8 Correctional Facility, which I'll just call Southern,  
9 that inmates who were members of SNM used to steal  
10 metal from the wheelchair program to fashion into  
11 shanks?

12 A. Yes.

13 Q. And he also told you that two of those  
14 inmates, Dale Chavez and Jason Wright, would bring  
15 those metal pieces back and give them to Daniel  
16 Sanchez and Mario Rodriguez?

17 A. Yes.

18 Q. And it's true, isn't it, that both Dale  
19 Chavez and Jason Wright were in the blue pod, same  
20 pod where Daniel Sanchez and Mario Rodriguez were?

21 A. Yes.

22 Q. The same pod where Javier Molina was  
23 killed; correct?

24 A. Yes.

25 Q. Now, when Mr. Martinez told you about the

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1 statements that Daniel Sanchez made with regard to  
2 the source of the shanks used on Javier Molina, he  
3 didn't tell you that he had any other basis to  
4 believe that, other than what Daniel Sanchez said to  
5 him; correct?

6 A. Well, yes, and no. I mean, yes, in that he  
7 related what Daniel Sanchez told him. But with  
8 regard to the shanks, I think he also heard about  
9 that from Mario Rodriguez.

10 Q. Okay. So Mario Rodriguez, who I think you  
11 also testified allegedly told Jerry Montoya when he  
12 gave him the shank, it came from Rudy Perez' walker?

13 A. I think that's accurate.

14 Q. I mean, I think that was part of your  
15 testimony yesterday, and what Jerry Montoya told you;  
16 true?

17 A. Yes.

18 Q. But other than what Timothy Martinez had  
19 heard, he didn't have any other basis? For instance,  
20 he didn't see anybody taking Mr. Perez' walker or  
21 removing pieces from Mr. Perez' walker, that sort of  
22 thing?

23 A. No, he didn't tell me that.

24 Q. And Mr. Perez was also in the blue pod, the  
25 same pod where all of our players were; correct?

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1           A. Yes, sir.

2           Q. You didn't see any video evidence  
3 demonstrating somebody going into Mr. Perez' room,  
4 removing the walker, taking pieces from the walker,  
5 anything like that?

6           A. I have not.

7           Q. Any video evidence at all corroborating the  
8 statements that Timothy Martinez told you?

9           A. With regard to getting metal pieces out of  
10 Mr. Perez' cell, no.

11          Q. Yeah, that should be --

12          A. No.

13          Q. Nothing like that?

14          A. No.

15          Q. And video cameras do capture the rooms in  
16 the pod; true?

17          A. Externally, the doorway.

18          Q. But if the door was open and somebody went  
19 in, you could see that?

20          A. Parts of the room, yes.

21          Q. And maybe you could see somebody trying to  
22 dismantle the walker?

23           MR. CASTELLANO: I'm going to object again.  
24 Once again, we're getting away from the actual  
25 statements.

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1                   THE COURT: Tie it to the James portions  
2 here.

3                   MR. VILLA: Again, Your Honor, the second  
4 element that the Government must establish is that  
5 Mr. Perez was member of this conspiracy to kill  
6 Javier Molina. This would be independent evidence  
7 other than the statements we've heard that would or  
8 would not corroborate that.

9                   THE COURT: Well, I'll give you a little  
10 leeway. But let's tighten it up on the statements.

11                  Q. And I think that's probably the end of this  
12 line. But Agent Acee, just to answer that last  
13 question, the video could capture somebody going into  
14 the room messing with the walker?

15                  A. That's possible, yes.

16                  Q. Now, the Government in its response has  
17 said that the shanks apparently used to kill Javier  
18 Molina make a perfect fit to Mr. Perez' walker. Are  
19 you familiar with that?

20                  A. I have heard that.

21                  Q. Where is Mr. Perez' walker?

22                  A. I'm not sure.

23                  Q. Are you aware whether it's being held in  
24 evidence anywhere?

25                  A. I don't believe it is.

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1 Q. Isn't it true that the walker is gone?

2 A. Well, I don't know where it is. It's  
3 not -- unfortunately, it's not unusual for  
4 Corrections to have evidence somewhere, and I don't  
5 always know about it until sometime later. But I  
6 have not seen it and I don't know where it is.

7 Q. And you, yourself, didn't take some of the  
8 shanks recovered following Mr. Molina's murder and  
9 try to see if they fit in a walker, did you?

10 MR. CASTELLANO: Objection as to relevance,  
11 Your Honor.

12 THE COURT: Overruled.

13 A. I have not handled the shanks at all or  
14 pieces of them, or the walker.

15 Q. Anybody under your direction have done the  
16 same thing?

17 A. No.

18 Q. So nobody came to you from the Department  
19 of Corrections and said: I matched this up to a  
20 walker that I believe came from Mr. Perez, and it's a  
21 perfect fit?

22 A. No one came to me and did that. And I  
23 didn't direct anyone to do that. I have heard some  
24 conversation or back and forth on someone possibly  
25 having done that. But it wasn't me or any of the

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1 agents that work with me.

2 Q. And have you seen any reports or photos of  
3 such a demonstration being done?

4 A. No, I think I've only seen photos of the  
5 weapons themselves, the evidence photos. But I don't  
6 think I've seen any photos of the comparison.

7 Q. There is a photo of a walker; correct?

8 A. I believe so.

9 Q. Do you have any idea who took that photo?

10 A. I believe the Department of Corrections or  
11 the State Police.

12 Q. But you don't know which one?

13 A. As I sit here, no, I don't know.

14 Q. And as you sit here today, you don't know  
15 where the walker in question is, or if it's still  
16 available?

17 A. That's right.

18 MR. VILLA: That's all my questions, Your  
19 Honor.

20 THE COURT: Thank you, Mr. Villa.

21 Anyone else on the defense side that wants  
22 to cross-examine Mr. Acee on the Molina murder,  
23 alleged Molina murder?

24 All right. Mr. Castellano, do you have  
25 redirect of Mr. Acee?

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1 MR. CASTELLANO: Yes, Your Honor.

2 THE COURT: Mr. Castellano.

3 REDIRECT EXAMINATION

4 BY MR. CASTELLANO:

5 Q. Just a follow-up from yesterday, Agent  
6 Acee. People asked you -- Mr. Lowry asked you about  
7 people sometimes making false claims about various  
8 acts they've done for the SNM. Do you recall that?

9 A. Yes.

10 Q. And are you aware that sometimes there are  
11 also consequences for people making false claims  
12 about criminal conduct?

13 A. Yes.

14 Q. What kinds of consequences are you aware  
15 of?

16 A. That's one of the questions I will usually  
17 ask the SNM members that I talk to. And the  
18 consequences have ranged from some guys saying that's  
19 tolerable or acceptable, it happens; to others saying  
20 that they should get a beat-down for it.

21 Q. Now, other than face-to-face communications  
22 within the prison system, how else can inmates  
23 communicate with each other?

24 A. Through third parties, three-way calls,  
25 through kites, wilas, or notes; through correctional

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1 staff either, you know, intentionally passing a  
2 nefarious message, or unintentionally doing it.

3 Q. So is it then possible that people can  
4 communicate with each other, including communicating  
5 orders to hit somebody without having a face-to-face  
6 interaction?

7 A. Yes.

8 Q. And explain the third party communications  
9 you mentioned.

10 A. Well, the inmates -- obviously, their calls  
11 are recorded, with the exception of legal calls. The  
12 way the three-way call works is that an inmate places  
13 a call to, say, a girlfriend, who then simply puts  
14 her phone on speaker, has a secondary phone, and  
15 calls another party. I've observed this where two  
16 inmates at different facilities are able to talk to  
17 each other through that three-way call.

18 Q. Yesterday Ms. Jacks asked you about Lupe  
19 Urquiza and when you first spoke to him. Do you  
20 remember that?

21 A. Yes.

22 Q. And you first -- well, you stated you first  
23 learned about him in court. Do you remember that?

24 A. Yes.

25 Q. How was it that you learned about him in

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1 court?

2 A. We were having, I believe it was a motions  
3 hearing, and I overheard one of Mr. Sanchez'  
4 attorneys mention Lupe Urquizo. And I don't want to  
5 misquote him, but the gist of it was Lupe Urquizo was  
6 the one that brought the paperwork down from PNM to  
7 Southern. That piqued my interest and so I went and  
8 talked to him.

9 Q. And when you talked to him the first time,  
10 was he represented by counsel?

11 A. No.

12 Q. And had you learned that anyone else had  
13 spoken to him before you had spoken to him?

14 A. Yes.

15 Q. Who was that?

16 A. Ms. Jacks, and possibly a defense  
17 investigator.

18 Q. I wanted to clarify the statement made by  
19 Chris Garcia that Timothy Martinez relayed to you.  
20 At that point, was he housed with Defendant Garcia,  
21 or had he been moved?

22 A. At the time in which he told me the  
23 statement, they were no longer housed at the same  
24 facility. At the time that he spoke with Garcia,  
25 they obviously were.

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1 Q. Relating to Mr. Perez, have other members  
2 indicated to you that Mr. Perez is a member of the  
3 SNM?

4 A. Yes.

5 Q. And are you aware of him making admissions  
6 to law enforcement that he's a member of SNM?

7 | A. Yes.

8 MR. CASTELLANO: May I have a moment, Your  
9 Honor?

10 | THE COURT: You may.

11 MR. CASTELLANO: Thank you, Your Honor. I  
12 pass the witness.

13 THE COURT: Thank you, Mr. Castellano.

All right. Mr. Acee, you may step down.

15 Thank you for your testimony.

16 You have something, Mr. Lowry?

17 MR. LOWRY: I do. He just opened it up on  
18 redirect, Your Honor.

19 THE COURT: All right. Mr. Acee, if you'll  
20 be seated and take Mr. Lowry's questions. Mr. Lowry.

21 MR. LOWRY: Thank you, Your Honor.

## EXAMINATION

23 BY MR. LOWRY:

24 O. Good morning, Mr. Acee, Special Agent Acee.

25 A. Good morning.

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1           Q. You had mentioned about consequences for  
2 taking credit for something you didn't do?

3           A. Yes.

4           Q. And what are some of the types of  
5 consequences? You said there were beat-downs or --  
6 what else?

7           A. Well, in some cases some of the members  
8 told me that they didn't really see it as a problem,  
9 and that it's a common occurrence to take credit for  
10 something they didn't do or to brag.

11          Q. And sometimes consequences for violating  
12 the rules of the organization, you could be kited out  
13 or sent to Level 6?

14          A. I think that occurs. I don't know that  
15 that's part of reglas or the rules, but I think that  
16 does occur, yes.

17          Q. So if you didn't live up to the standards  
18 of the SNM, you could be removed from, for instance,  
19 Southern facility, here in Las Cruces, to Level 6,  
20 based on the communication of other alleged members  
21 of the SNM to the Correctional Department?

22          A. I think anyone -- yes, I think anyone can  
23 send a kite at any time saying anything.

24          Q. Now, you had mentioned just on redirect  
25 that the first time you were aware that Lupe Urquizo

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1 may have been involved was something you overheard in  
2 the courtroom after the case had been indicted?

3 A. Yes.

4 Q. How long have you been actively involved in  
5 the investigation of this case?

6 A. It started in March of 2015. I was up at  
7 the facility investigating a different gang. And the  
8 letters came out, and so that's when I was asked to  
9 look into it.

10 Q. Now, from March of 2015 forward, were you  
11 involved with looking at Jerry Armenta's  
12 participation in the allegations with the Molina  
13 murder?

14 A. Yes.

15 Q. Did you review the videotaped interview in  
16 the state case that was done at the Department of  
17 Corrections?

18 MR. CASTELLANO: Objection. This is beyond  
19 the scope of redirect, Your Honor.

20 MR. LOWRY: Your Honor, I can tie this  
21 straight --

22 THE COURT: I'm going to give you a little  
23 leeway. Then I'll give Mr. Castellano an opportunity  
24 to expand his redirect. Overruled.

25 A. At the time I heard Urquiza's name, I had

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1 not. I have since then, though.

2 Q. My question is very simple: Did you review  
3 the videotaped -- I would call it interrogation; you  
4 might take offense to that -- but the videotaped  
5 conversation between the Department of Corrections  
6 staff, the state prosecutor, and Jerry Armenta?

7 A. Well, my answer is I have seen it. But it  
8 sounds like you're asking me had I seen it prior to  
9 hearing the name in court.

10 Q. Well, let me ask you really simply: When  
11 did you first review the video?

12 A. Maybe about nine months ago.

13 Q. So you hadn't reviewed that video before  
14 the case was indicted?

15 A. No.

16 Q. But you are aware in that video, having  
17 reviewed it, that Jerry Armenta pinpointed Lupe  
18 Urquiza as one of the two people that, quote,  
19 "donkeyed the paperwork down"?

20 A. Yes.

21 Q. That wasn't of interest to you at the time  
22 the statement was made by Mr. Armenta to  
23 prosecutorial officials and Department of Corrections  
24 officials?

25 A. It was. But there were so many different

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1 versions of what happened, I was trying to put my own  
2 eyes on it, and look at it from an unbiased or fresh  
3 perspective, not relying on the prior stuff.

4 Q. What do you mean "different versions of  
5 what happened"?

6 A. Well, their initial version of what  
7 happened that they told the state investigators,  
8 versus what they're telling me in their second or  
9 third debrief. There are a lot of variance and  
10 differences.

11 Q. And, for instance, one of those differences  
12 may have led the United States Government to  
13 incorrectly indict Mauricio Varela for the Molina  
14 murder?

15 A. I don't think he was incorrectly indicted.  
16 I had -- as more defendants began cooperating, I  
17 learned more. And at the time we sought the  
18 indictments, we went with the information that we had  
19 at the time. I don't want say it was incorrect. I  
20 just learned more since then.

21 Q. And since you learned more, the Molina  
22 counts against Mr. Mauricio Varela were dropped,  
23 weren't they?

24 A. I believe they were.

25 Q. And that's because you learned that the

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1 initial statements that you relied upon were  
2 unreliable?

3 A. Yeah. We got clarity, we got more  
4 information. I mean, the decision to drop a case  
5 certainly isn't mine, to drop an indictment. But my  
6 role is to keep gathering information and try to  
7 verify stuff, and then report that back to the  
8 prosecutors.

9 Q. That's fair enough. But it's also fair to  
10 say that, as you gather information, that changes the  
11 legal landscape of a case?

12 A. That's fair, yes.

13 Q. And in some cases the information you learn  
14 may change the legal landscape to the point where the  
15 right thing to do is to dismiss a charge?

16 A. Absolutely.

17 MR. LOWRY: I have no further questions,  
18 Your Honor.

19 THE COURT: Thank you, Mr. Lowry.

20 Any other defendant following up on  
21 redirect or Mr. Lowry's questions, have any questions  
22 of Mr. Acee?

23 MS. JACKS: I do, Your Honor.

24 THE COURT: Ms. Jacks.

25 MS. JACKS: Thank you.

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## 1 EXAMINATION

2 BY MS. JACKS:

3 Q. Good morning, Agent Acee.

4 A. Good morning.

5 Q. I want to start with some questions that  
6 Mr. Castellano asked you this morning regarding the  
7 way inmates communicate with each other. And I think  
8 you listed that you said there are ways other than  
9 face-to-face conversations that inmates can  
10 communicate with each other?

11 A. Yes.

12 Q. And is that something that you've been  
13 aware of prior to beginning your investigation in  
14 this case?

15 A. Yes.

16 Q. So you knew this back before you became  
17 involved in March of 2015?

18 A. That inmates can communicate?

19 Q. In various ways.

20 A. Yes.

21 Q. Through notes, through phone calls, in rec  
22 cages, through third parties. You're aware of that?

23 A. Yes.

24 Q. That's not something that's new to you?

25 A. No.

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1           Q.     And when you're interviewing somebody that  
2     is trying to be a cooperator for the Government,  
3     somebody that's trying to leverage information they  
4     have for a reduced punishment, you interview that  
5     person differently than, say, an eyewitness to a  
6     crime, right?

7           A.     Perhaps.

8           Q.     Perhaps you're a little more suspect about  
9     the information that they're giving you?

10          A.     I'm always suspect, but probably a little  
11       bit more.

12          Q.     And you want to make sure that you pin them  
13       down about things that they're telling so you that  
14       can you go either corroborate, cross-reference it, or  
15       check it out?

16          A.     Yes.

17          Q.     And that's something that you were doing  
18       ever since you started working on this case, right?

19          A.     Yes.

20          Q.     It's not something that you just learned to  
21       do?

22          A.     No.

23          Q.     And so is it fair to say that when you were  
24       interviewing cooperators involved, or informants  
25       involved in this case, that it was in your mind that

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1 you needed to test their information?

2 A. Yes.

3 Q. That you needed to try to pin down their  
4 information or what they were trying to give to you?

5 A. Yes.

6 Q. And it was also in your mind that inmates  
7 can communicate in many different ways?

8 A. Yes.

9 Q. And so, with that in mind when you were  
10 questioning these informants, did you, when they told  
11 you, Oh, I heard this from so and so, did you then  
12 try to pin them down on how they heard it?

13 A. In some instances, yes. In others, no.

14 Q. Well, was one of the things that you asked  
15 these informants -- let's say, for example, Mr.  
16 Urquizo, when Mr. Urquizo claimed to have had a  
17 conversation with somebody, did you ask him when and  
18 where and how?

19 A. Yes.

20 Q. And if he told you that information, if he  
21 was able to tell you that information, did you put it  
22 in your report?

23 A. Yes.

24 Q. With respect to the questions this morning  
25 about Lupe Urquizo, when you spoke with Mr. Urquizo,

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1 did you ask him whether he had met with other people  
2 from the defense, met with people from the defense?

3 A. Yes. By way of introduction, I told him I  
4 was there because his name came up in court.

5 Q. Okay. And did he tell you that he had met  
6 with me and an investigator working on behalf of Mr.  
7 Sanchez?

8 A. Yes.

9 Q. And I would assume you were curious about  
10 what he might have told us?

11 A. Yes.

12 Q. Because you don't have a copy of the report  
13 of that interview, do you?

14 A. No.

15 Q. And did you ask Mr. Urquiza what he told me  
16 and my investigator when we spoke with him about this  
17 story regarding paperwork being transferred from PNM  
18 to Southern?

19 A. I didn't frame the question that way. I  
20 was after the same information. I wanted to know:  
21 Why is Mr. Sanchez' defense team bringing your name  
22 up in court, and what do you have to do with this?

23 Q. So that's what you told Mr. Urquiza?

24 A. Yes.

25 Q. And what did he say?

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1           A. Well, we had a couple-hour conversation.

2           Q. Well, what did he say about what he told us  
3 regarding he was the person who transported the  
4 paperwork to Southern?

5           A. I think that he said that he lied to you  
6 and said that he was not. And then he had some  
7 comments about that. And then this is where he  
8 started getting kind of nervous, and he said  
9 something along these lines -- this isn't a direct  
10 quote -- I know what you're looking for, I know the  
11 information, but what's going to happen to me?

12           And so I explained the possibilities of  
13 what could happen. We went back and forth on that.  
14 We got to the point where I thought it was best to  
15 probably get him an attorney so that he could feel  
16 comfortable being truthful.

17           Q. So this was in the first meeting that you  
18 had with him?

19           A. Yes.

20           Q. And he said: I know what you're looking  
21 for. What's going to happen to me?

22           A. Those aren't direct quotes, but I'm  
23 summarizing a two-hour conversation.

24           Q. And did you tell him in that conversation  
25 that if he provided you with what you were looking

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1 for, that you could do something for him?

2 A. Not that -- no, not -- I talked about the  
3 possibilities. I did not --

4 Q. Possibilities of what?

5 A. Well, like charging him in the homicide,  
6 doing his time in the feds instead of the state, of  
7 getting him an attorney. I talked to him about what  
8 I perceived to be the realistic possibilities with  
9 him giving us that information.

10 Q. So before he told you anything about the  
11 paperwork, you gave him information about benefits he  
12 could receive if he told you what you were looking  
13 for?

14 A. Getting charged by the feds and getting  
15 additional time is not a benefit. I wouldn't  
16 consider that a benefit.

17 Q. Well, the way you phrased it, going and  
18 doing his time in the feds, and getting an attorney,  
19 were those benefits?

20 A. I don't think so.

21 Q. What about money or social visits?

22 A. No.

23 Q. Or confinement conditions?

24 A. No. Those are all things that are part of  
25 the process of cooperation, but those aren't things

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1 that I advertise in our first sit-down.

2 Q. So did you talk to him about it in your  
3 second and third sit-downs, things like money, social  
4 visits, and improved conditions of confinement?

5 A. Yes, not exactly in those terms, but  
6 ultimately, it's the same thing. Security concerns;  
7 that has to do with probably comfort level and what  
8 facility they're at.

9 Q. In the first conversation you had with Mr.  
10 Urquizo did you tell him that it was possible that he  
11 could be charged with racketeering or VICAR charges?

12 A. Yes.

13 Q. And that he could face a punishment of life  
14 in prison, or worse?

15 A. I don't know that I said that. But I  
16 definitely said that he could be charged with  
17 racketeering offenses.

18 Q. And in any of your interactions with Mr.  
19 Urquizo -- well, have you paid Mr. Urquizo any money  
20 from the first time met with him till now?

21 MR. CASTELLANO: Objection, Your Honor.  
22 We're way beyond the statements at this point.

23 THE COURT: How do you tie that to the  
24 James hearing?

25 MS. JACKS: I think it goes to the

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1 credibility, and whether or not the statement was, in  
2 fact, made.

3 MR. CASTELLANO: Credibility is for  
4 impeachment at trial, Your Honor.

5 THE COURT: I think we better leave that  
6 for another day. Interesting question, but I think  
7 we better leave it for another day. Sustained.

8 Q. Now, if I understand your testimony  
9 correctly, in your second interview with Mr. Urquiza,  
10 where he had his attorney there, he told you that he  
11 was the person, not Mauricio Varela, that brought  
12 paperwork from PNM to Southern?

13 A. Yes.

14 Q. And that was on what date?

15 A. I don't know. I'd need to look at my  
16 reports.

17 Q. Do you have your reports?

18 A. No.

19 Q. Was that -- well, let's just go back for a  
20 second. Was that in 2016?

21 A. I don't think so. I think it was 2017.  
22 I'm not entirely sure, though. It took us months to  
23 get him an attorney. The process was really drawn  
24 out.

25 Q. It took you months to go back and talk to

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1 him the second time?

2 A. Yes.

3 Q. When he told you that, did you make any  
4 disclosures? Did you tell that to the Government  
5 prosecutors that Mr. Urquiza said he brought the  
6 paperwork, and the role they'd assigned to Mr.  
7 Varela, and the thing they'd indicted him for was  
8 untrue?

9 A. No.

10 Q. And you didn't tell the prosecutors?

11 A. The prosecutors were present during the  
12 second -- any subsequently debriefs, at least one of  
13 the prosecutors was there.

14 Q. And after Mr. Urquiza provided you that  
15 information, what efforts, if any, did you on behalf  
16 of the Government make to correct the presentation to  
17 the Grand Jury?

18 A. Well, I sought out corroborating  
19 information.

20 Q. On Mr. Urquiza's statements?

21 A. Yes, on the whole transaction, on whether  
22 or not Varela -- because others said Varela did it.

23 Q. And so what corroborating information did  
24 you find, if any?

25 MR. CASTELLANO: Same objection, Your

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1 Honor. We're getting away from statements.

2 THE COURT: Sustained.

3 MS. JACKS: I have nothing further.

4 THE COURT: Thank you, Ms. Jacks.

5 Any other defense lawyers that want to  
6 follow-up on this line of questioning, Mr.

7 Castellano's questioning?

8 All right. Mr. Castellano, you have  
9 redirect?

10 REDIRECT EXAMINATION

11 BY MR. CASTELLANO:

12 Q. Agent Acee, when it comes to Mauricio  
13 Varela, did you have information in this case  
14 initially that both he and Lupe Urquiza brought the  
15 paperwork down to Southern?

16 A. Yes.

17 Q. And also during this investigation have you  
18 learned that Mauricio Varela was present during  
19 conversations related to the hit on Mr. Molina?

20 A. Yes.

21 MR. CASTELLANO: I have no further  
22 questions, Your Honor.

23 THE COURT: All right. Thank you, Mr.  
24 Castellano.

25 All right. Mr. Acee, you may step down.

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1 All right. How do we want to proceed? Do we want to  
2 have argument now on the James hearing and those  
3 related here? Do we want to take testimony? How do  
4 we want to proceed, Mr. Castellano?

5 MR. CASTELLANO: Your Honor, we have more  
6 testimony to present to the Court.

7 THE COURT: Okay. I recall that now. I  
8 apologize.

9 MR. CASTELLANO: What I want to at least  
10 propose to the Court is Agent Stemo is prepared to  
11 present testimony on three other people related to  
12 the Molina murder.

13 THE COURT: Okay.

14 MR. CASTELLANO: To the best we can,  
15 assuming we haven't left anything out, I'd like to  
16 close out the Molina murder, and then any residual  
17 statements, and then potentially take a break from  
18 that testimony, and move to the experts, because  
19 we've had them sitting here since yesterday. So I  
20 think we can get them on and off, that would be  
21 great. But it's up to the Court obviously.

22 THE COURT: No, that sounds fine with the  
23 Court. I think we ought to cooperate to get  
24 witnesses on or off. Anybody have any objections so  
25 proceeding?

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All right. That's how we will proceed.

2 MR. CASTELLANO: All right. With that, we  
3 will call Special Agent Nancy Stemo.

4                   THE COURT: Ms. Stemo, if you'll come up  
5 and stand next to the witness box on my right, your  
6 left. Before you're seated, Ms. Solis will swear you  
7 in.

8 NANCY STEMO,

9 after having been first duly sworn under oath,  
10 was questioned and testified as follows:

11 | DIRECT EXAMINATION

12 THE CLERK: Please be seated and state and  
13 spell your name for the record.

14 THE WITNESS: Nancy Stemo; N-A-N-C-Y,  
15 S-T-E-M-O.

16 THE COURT: Ms. Stemo. Mr. Castellano.

17 MR. CASTELLANO: Thank you, Your Honor.

18 BY MR. CASTELLANO:

19 Q. Ms. Stemo, I want to draw your attention to  
20 statements or information provided by Jerry Armenta.  
21 And can you tell the Court what Mr. Armenta said that  
22 Daniel Sanchez said to him or ordered him to do?

23           A. Daniel Sanchez ordered Armenta to carry out  
24 the hit on Javier Molina because he needed to put in  
25 work for the SNM. And he stated that if Armenta

1 refused, he could also be killed.

2 Q. And what did he say that Mr. Sanchez said  
3 during the time that Mr. Armenta was assaulting  
4 Javier Molina?

5 A. After Javier Molina exited his cell and  
6 Jerry Armenta and Jerry Montoya were following Molina  
7 down to the bottom tier, Armenta overheard Daniel  
8 Sanchez saying, "Get him, get him."

9 MR. CASTELLANO: While we're on Mr.  
10 Armenta, Your Honor, that's related to the Molina  
11 murder. I'm going to shift gears towards the Gregg  
12 Marcantel/Dwayne Santistevan counts. I think those  
13 are Counts 9 and 10.

14 Q. What did Mr. Armenta tell you about  
15 conversations he had related to the Marcantel  
16 conspiracy to murder?

17 A. Jerry Armenta mentioned that Robert  
18 Martinez had told him that Robert Martinez and Roy  
19 Martinez had put a hit order on Gregg Marcantel and  
20 Dwayne Santistevan.

21 Q. Okay. Now, I want to turn your attention  
22 to a conversation you had with Mario Rodriguez. Did  
23 you have a chance to speak to him?

24 A. I did.

25 Q. I want to draw your attention to -- I think

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1 it's page 5 of your report. What did Mr. Rodriguez  
2 indicate about a statement made to him by Daniel  
3 Sanchez related to the Molina paperwork?

4 A. While Rodriguez and Daniel Sanchez were  
5 reading the paperwork, Daniel Sanchez stated, "It's  
6 done."

7 Q. And in what context was that made in terms  
8 of reviewing the paperwork?

9 A. That the decision had been made because  
10 they had received the paperwork.

11 Q. And what did Daniel Sanchez want Timothy  
12 Martinez to do?

13 A. He wanted Timothy Martinez to be involved  
14 in some fashion in the murder.

15 Q. I also want to ask you about a statement  
16 from Carlos Herrera to Mr. Rodriguez about the Molina  
17 murder?

18 A. When Carlos Herrera gave Mario Rodriguez  
19 the paperwork, Daniel Sanchez wanted to verify it,  
20 and Carlos Herrera told him to, "Get that shit  
21 fucking done."

22 Q. And had Mr. Rodriguez volunteered to  
23 participate in the murder?

24 A. He had. But Daniel Sanchez told him not  
25 to.

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1           Q. And what was said from Mr. Sanchez about  
2 covering the cameras?

3           A. He stated he did not want the cameras  
4 covered because the murder would be in a blind spot.

5           Q. And what did you take that to mean when the  
6 term "blind spot" was used?

7           A. That the cameras would not have an angle on  
8 where the murder occurred.

9           Q. Can you tell the Court about a statement  
10 made by Rudy Perez when Mr. Sanchez was in his cell?

11          A. When Mario Rodriguez went to Rudy Perez'  
12 cell, Daniel Sanchez pointed at a piece of Perez'  
13 walker, and Perez stated he was "down for whatever,  
14 as long as it was not me."

15          Q. And what did Mr. Rodriguez say about a  
16 conversation he had with Timothy Martinez, once Mr.  
17 Martinez returned from the wheelchair program?

18          A. Rodriguez told Timothy Martinez to go get  
19 high because the paperwork had arrived.

20          Q. What was the purpose of getting high, do  
21 you remember?

22          A. I don't.

23          Q. And was there a clarification about who the  
24 paperwork was for?

25          A. There was. Timothy Martinez initially

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1       volunteered to do the hit, because he thought the  
2       paperwork on Jerry Montoya had arrived. But  
3       Rodriguez clarified that the paperwork on Javier  
4       Molina had arrived instead.

5           Q. And what statements did Timothy Martinez  
6       make about Javier Molina's fiero or shank?

7           A. Martinez stated that Molina had given him  
8       his shank prior to count, and Martinez had placed  
9       that shank inside of a bag of canteen. Martinez  
10      later gave that shank to Rodriguez.

11           Q. And what directions did Mr. Rodriguez give  
12      to Mr. Martinez about Javier Molina?

13           A. Rodriguez told Timothy Martinez that he,  
14      Rodriguez, would handle it, but later told Martinez  
15      to choke out Molina.

16           Q. What was the statement about Jerry Montoya  
17      being approached regarding the Molina murder and the  
18      paperwork?

19           A. Do you mean Montoya?

20           Q. Yes. What was Montoya's response regarding  
21      the Molina murder initially?

22           MS. JACKS: Your Honor, I'm going to  
23      object, because I'm not clear who the declarant is.  
24      The way the questions are being asked, I can't  
25      ascertain what statements are being elicited.

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1                   THE COURT: Well, I'll let you explore that  
2 on cross. Let me let Mr. Castellano put on his  
3 evidence the way he wants to proceed. And we'll deal  
4 with that on cross. Overruled.

5                   Q. Can you tell the Court whether Mr.  
6 Rodriguez confirmed to Mr. Montoya that he had seen  
7 the paperwork on Javier Molina?

8                   A. He did.

9                   Q. What was Mr. Montoya's response?

10                  MS. JACKS: Same objection.

11                  THE COURT: Overruled.

12                  Q. Once Mr. Montoya learned that the paperwork  
13 was there, what was his response?

14                  A. He said he would do it.

15                  Q. What did Mr. Sanchez tell Mr. Rodriguez  
16 about leaving any dope behind in Javier Molina's  
17 cell?

18                  A. Mr. Sanchez told Rodriguez to not leave any  
19 dope behind in Molina's cell and that they could go  
20 halfers on it later.

21                  Q. Once they were inside Javier Molina's cell,  
22 what did Mr. Rodriguez tell Timothy Martinez about  
23 exiting the cell?

24                  A. Rodriguez told Martinez to exit the cell.

25                  Q. What happened next?

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1           A.     Jerry Armenta and Jerry Montoya entered and  
2 began stabbing Molina. Rodriguez instructed both  
3 Armenta and Montoya to not let Molina out of the  
4 cell. Rodriguez overheard Montoya tell Molina to  
5 stay back, and Molina did not.

6           Q.     And when Mr. Molina made a statement that  
7 he was done, saying, Come on, I'm done now, what was  
8 Rodriguez' response to that?

9           A.     He told Molina that he was no carnal.

10          Q.     When it came to Mr. Herrera wanting to pass  
11 the paperwork to green pod, what was Mr. Rodriguez'  
12 response to him?

13          A.     Rodriguez told Herrera not to pass the  
14 paperwork to green pod because the individuals in  
15 green pod had been protecting Molina.

16          MR. CASTELLANO: May I approach the  
17 witness, Your Honor?

18          THE COURT: You may.

19          Q.     Okay. Ms. Stemo, I'm handing you what's  
20 been marked for identification as Government's  
21 Exhibit 16. Do you recognize that exhibit?

22          A.     I do.

23          Q.     And what is it?

24          A.     It's a transcript between -- or transcript  
25 of a recording of conversations between Rudy Perez

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1 and the confidential human source.

2 Q. And in what month was that recording taken?

3 A. February.

4 Q. Of what year?

5 A. 2016.

6 Q. And have you had an opportunity to review  
7 that transcript beforehand?

8 A. I have.

9 Q. And to the best of your understanding, is  
10 it a fair transcript of the recording?

11 A. Can you repeat that?

12 Q. To the best of your knowledge, does the  
13 transcript accurately reflect the contents of the  
14 recording?

15 A. Yes.

16 Q. And does this transcript contain admissions  
17 by Rudy Perez?

18 A. It does.

19 Q. And are you aware whether or not he names  
20 other people involved in the Molina murder  
21 conspiracy?

22 A. I don't think he does in this transcript.

23 Q. Let me draw your attention to the second  
24 page toward the bottom of the transcript, and ask you  
25 if anyone else's name is mentioned?

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1 A. The source mentions "Dan Dan."

2 Q. And who do you understand "Dan Dan" to be?

3 A. Daniel Sanchez.

4 MR. CASTELLANO: Your Honor, I move the  
5 admission of Government's Exhibit 16.

6 THE COURT: Let me ask you, yesterday when  
7 you did all those plea agreements, I think we went 1  
8 through 14.

9 MR. CASTELLANO: I was mistaken, Your  
10 Honor. They were 1 through 15, and I have marked  
11 them accordingly.

12 THE COURT: All right. So I understand the  
13 defendants' objection, but I'll admit Government's  
14 Exhibit 15.

15 And any objection to 16 now?

16 MS. JACKS: Your Honor, we --

17 MR. ADAMS: I'd like to see it.

18 MS. JACKS: We haven't had a chance to look  
19 at it.

20 THE COURT: All right. Do you have a copy  
21 for the defendants?

22 MR. CASTELLANO: Sure. We can put it on  
23 the visualizer, Your Honor.

24 THE COURT: All right.

25 MS. JACKS: Well, I'd like a chance to

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1 review it before I make arguments about it.

2 MR. CASTELLANO: This is in discovery, Your  
3 Honor. It's beginning at Bates stamp 20529 of the  
4 DeLeon discovery.

5 THE COURT: All right. Any objection?

6 MR. VILLA: Your Honor, I have to get to  
7 the microphone.

8 MR. ADAMS: I'll pass that over. Judge,  
9 could I ask you to please ask the witness to speak  
10 into the microphone a little more. We have a hard  
11 time hearing her.

12 THE COURT: All right. If you'll speak up.  
13 I know you're speaking into the microphone. So if  
14 you'll just speak a little louder.

15 THE WITNESS: Yes.

16 MR. VILLA: And Your Honor, Exhibit 16 is a  
17 transcript of a statement that is subject to a motion  
18 to suppress that's set to be heard by this Court week  
19 after next. And the basis is that the statement was  
20 made involuntarily. And I haven't -- can't say I  
21 have a cite at my fingertips whether that applies in  
22 a James hearing. But I guess I would ask the Court  
23 to perhaps consider reserving ruling on the James  
24 hearing until it makes a decision about the  
25 voluntariness of the statement. Because if it is

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1       involuntary, it's in violation of due process, and I  
2       think the Court should not, then, be able to use it  
3       in making any determinations with respect to James.

4                  THE COURT: All right. Well, let me do  
5       this, if this works for everybody: Why don't I admit  
6       it for purposes of this hearing, so we can take the  
7       testimony while we've got the witness here. And then  
8       in our arguments we'll -- I'll ask the Government and  
9       I'll ask the defense lawyers to also point out to me  
10      if I'm about to rely on in any way this testimony,  
11      and I'll try then to tie the ruling I'm going to make  
12      on the other, and then research this issue. Because  
13      I'm not sure I know the answer to it either.

14                 MR. VILLA: And I'll take a look and come  
15      up with some kind of brief for you, too, as well.

16                 THE COURT: All right. So let's just flag  
17      it. But I'll admit it for purposes of the hearing,  
18      and not yet make a determination whether I'll rely on  
19      it. All right. Does that work for everybody?

20                 MR. CASTELLANO: Yes, Your Honor. And I  
21      agree with the Court's approach, but I need to get  
22      the statements before the Court.

23                 THE COURT: All right. Mr. Castellano.

24                 MR. CASTELLANO: May I approach the  
25      witness?

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1                   THE COURT: You may.

2                   Q. Just for ease of the testimony, Ms. Stemo,  
3 I'll put it on the visualizer so everyone can see it.

4                   Do you see here the discussion about the shanks  
5 coming from --

6                   MR. DAVIS: Judge, we're not on back here.

7                   MR. CASTELLANO: The TV screen isn't on,  
8 Your Honor.

9                   MS. JACKS: Is this Exhibit 16 for the  
10 record?

11                  MR. CASTELLANO: This is Exhibit 16.

12                  MS. JACKS: What Bates number?

13                  MR. CASTELLANO: 20531. It's coming on the  
14 screen back there, Your Honor, but there is menu  
15 screen.

16                  THE COURT: All right. Let's go ahead and  
17 proceed. I think we know what the document is and  
18 we'll try to get it up as soon as we can.

19                  Mr. Castellano.

20                  MR. CASTELLANO: Thank you, Your Honor.

21                  Q. Do you see on here, Agent Stemo, that there  
22 is a discussion of the shanks coming from Mr. Perez'  
23 walker?

24                  A. I do.

25                  Q. And at that point, what does Mr. Perez

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1 acknowledge that "Dan Dan," or Daniel Sanchez was  
2 running the pod at that time?

3 A. He does.

4 Q. And what does he say about them approaching  
5 him about the shanks from his walker?

6 A. They say that they approached him; that  
7 they needed -- that they needed it taken care of, and  
8 they needed squina from Rudy Perez, and they didn't  
9 need him to do anything aside from that.

10 Q. What was Mr. Perez' response about his  
11 willingness to give up the parts of his walker to  
12 make shanks?

13 A. He essentially said he was willing, as long  
14 as it was a justified moved. He needed to something  
15 for the familia.

16 MR. CASTELLANO: Your Honor, I won't go  
17 anymore, the statement is already in evidence, the  
18 Court can look at the rest of it. But I think that's  
19 a summary of the statement.

20 May I have a moment, Your Honor?

21 THE COURT: You may.

22 MR. CASTELLANO: Thank you, Your Honor. I  
23 pass the witness.

24 THE COURT: All right. Thank you, Mr.  
25 Castellano.

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1                   Defendants have cross-examination of Ms.  
2 Stemo?

3                   MR. JEWKES: Yes, Your Honor.

4                   THE COURT: Mr. Jewkes.

5                   MR. JEWKES: May it please the Court.

6                   EXAMINATION

7 BY MR. JEWKES:

8 Q. Good morning, Agent Stemo.

9 A. Good morning.

10 Q. Okay. Regarding your interview of Jerry  
11 Armenta, can you tell us when your first interview  
12 with him took place?

13 A. The report that I was reading off of I was  
14 not present at that interview.

15 Q. Okay. So you were referring to another  
16 agent's 302; is that correct?

17 A. It's a 1023, it's a source reporting  
18 document.

19 Q. All right. When were you first assigned to  
20 the investigation of this case?

21 A. October 2016.

22 Q. All right. And you were aware that Jerry  
23 Armenta had given numerous versions of what happened,  
24 were you not?

25 A. I'm aware of that, yes.

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1           Q. And have you actually talked to him  
2 yourself?

3           A. Numerous occasions.

4           Q. All right. You told us that Mr. Armenta  
5 said that Daniel Sanchez told Armenta he had to carry  
6 out the hit?

7           A. He did.

8           Q. And did Mr. Armenta tell you anything about  
9 having been high on drugs at that time?

10          A. He did not.

11          Q. You're aware that he made prior statements  
12 to that effect, are you not?

13          A. I haven't read them.

14          Q. So you're not aware of that?

15          A. No, I'm not.

16          Q. When Mr. Armenta told you that Daniel  
17 Sanchez said that he, Jerry Armenta, needed to put  
18 the work in, did you ask him what he interpreted that  
19 to mean?

20          A. I was not at that interview.

21          Q. You were not. This is something you're  
22 relating to us that came from another interview that  
23 you weren't involved in; is that correct?

24          A. Correct.

25          Q. Now, you spoke somewhat briefly about an

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1 interview of Mario Rodriguez?

2 A. Correct.

3 Q. How many times have you interviewed him?

4 A. I believe three times.

5 Q. Can you tell us approximately when the  
6 first interview was?

7 A. In October 2017.

8 Q. Just a few months ago?

9 A. Correct.

10 Q. Where did that take place?

11 A. Here in Las Cruces.

12 Q. Did you ever tell him that he could gain  
13 benefits by talking to you?

14 A. I did not, no.

15 Q. Did you hear any other person in law  
16 enforcement do that?

17 A. No.

18 Q. Did he ever ask for any benefits?

19 A. No.

20 Q. Did he tell you why he wanted to cooperate  
21 with the United States Government?

22 A. He did.

23 Q. He did?

24 A. He did.

25 Q. What did he say?

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1 A. He was tired of the gang lifestyle.

2 Q. I'm sorry, ma'am, I didn't --

3 A. He was tired of the gang lifestyle.

4 Q. Tired of the lifestyle?

5 A. Correct.

6 Q. Wanted to change his life?

7 A. He did.

8 Q. But didn't say anything about wanting  
9 benefits?

10 A. Not to me, no.

11 Q. Do you know whether he asked any other  
12 agent?

13 A. I don't.

14 Q. Okay. Mr. Rodriguez, according to your  
15 testimony on direct examination, page 5 of your  
16 302 -- I'll give you a moment if you need to look at  
17 that.

18 A. You can go ahead.

19 Q. All right. Daniel Sanchez read the  
20 paperwork and said, "It's done"?

21 A. Correct.

22 Q. What did you interpret that to mean?

23 A. That the decision had been made on Javier  
24 Molina.

25 Q. Did Mr. Rodriguez tell you that he had told

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1 anyone else about that before he spoke to you?

2 A. What do you mean?

3 Q. About this business about Mr. Sanchez  
4 reading the paperwork and said, "It's done"?

5 A. No, he didn't mention speaking to anybody  
6 else about that.

7 Q. There has been a lot of discussion about  
8 paperwork. Do you know where that paperwork is?

9 A. I don't.

10 Q. As part of the investigation have you  
11 attempted to locate that so-called paperwork that  
12 came from PNM down to SNM?

13 A. I have not personally.

14 Q. Do you know if anyone in the FBI has?

15 A. I believe so.

16 Q. And who would that be?

17 A. Task Force Officer Mark Myers.

18 Q. Mark Myers. Have you had any conversations  
19 with Mark Myers about the paperwork?

20 A. No.

21 Q. So other than what's been said, we don't  
22 really know if that paperwork ever existed. Would  
23 you agree with that?

24 A. I would not.

25 Q. You would not agree with that?

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1           A. No. Just because I haven't seen it,  
2 doesn't mean it doesn't exist.

3           Q. And you're relying strictly upon what  
4 you've been told by cooperators; correct?

5           A. And other law enforcement officers.

6           Q. With regard to what you were told, that  
7 Carlos -- and you were told this, I believe, by Mario  
8 Rodriguez -- that Carlos Herrera read the paperwork;  
9 is that correct?

10          A. Correct.

11          Q. Where did that take place?

12          A. At Southern.

13          Q. The reading.

14          A. The reading of the paperwork?

15          Q. Um-hum.

16          A. At Southern.

17          Q. And did Mr. Rodriguez tell you what Carlos  
18 Herrera did with the paperwork after he read it?

19          A. No.

20          Q. In other words, you don't know if it was  
21 conveyed to someone else?

22          A. I do not.

23          Q. Agent Stemo, there has been some testimony,  
24 partly from you, that my client, Mr. Sanchez, did not  
25 want the cameras covered. Do you recall that?

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1 A. I do.

2 Q. And what was the reason for that that you  
3 were told?

4 A. That the location for the murder was in a,  
5 quote, "blind spot," and therefore the cameras did  
6 not need to be covered.

7 Q. So based upon what you were told, there was  
8 a belief that it would be done in a certain location  
9 that could not be captured by video; is that correct?

10 A. Correct.

11 Q. But, in fact, the assault -- the homicide  
12 was captured on video?

13 A. It was.

14 Q. Partially.

15 A. Yes.

16 Q. So how do you account for that, that there  
17 would be a belief that it would be done where the  
18 cameras couldn't capture?

19 A. I could speculate. Do you want me to do  
20 that?

21 Q. Not particularly, no. Thank you.

22 Agent Stemo, I know you've been asked this  
23 question before as to why someone wanted Tim Martinez  
24 to get high, at least that's what was told to you by  
25 Mario Rodriguez; correct?

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1 A. Um-hum.

2 Q. Did you ask Mr. Martinez why someone would  
3 want him to get high, what was the purpose for that?

4 A. I believe Rodriguez wanted Martinez to get  
5 high because Martinez was close to Javier Molina.

6 Q. You aware that Daniel Sanchez and Javier  
7 Molina were roommates for over a year there at SNM?

8 A. I was not.

9 Q. Are you aware that there was never any  
10 problems between them, I mean that were reported?

11 A. Reported to whom?

12 Q. Disciplinary actions. In other words,  
13 there was no disciplinary actions between Daniel  
14 Sanchez and --

15 A. No, I was not aware of that.

16 Q. Regarding your testimony and the shank,  
17 Timothy Martinez, whom you interviewed, said that  
18 Javier Molina gave him the shank -- a shank -- the  
19 day of the homicide; is that correct?

20 A. Correct.

21 Q. Did that seem somewhat strange to you as an  
22 investigator?

23 A. It did.

24 Q. And did it cause you to be somewhat  
25 suspicious as to whether or not that was true?

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1           A. No. Because we asked Timothy Martinez why  
2 he would do that, and he was able to explain that.

3           Q. And what did Mr. Martinez explain?

4           A. Martinez indicated that he and Javier  
5 Molina were really close and trusted each other, and  
6 therefore, Molina was okay with giving his shank to  
7 Martinez for safekeeping.

8           Q. Okay. So assuming that's true, Javier  
9 Molina gave a shank to Timothy Martinez for  
10 safekeeping, to keep it safe from what? Did you  
11 inquire as to why, any further than that?

12          A. Javier Molina was going to take a shower,  
13 and he did not want the shank in there with him.

14          Q. Have you interviewed any other cooperators  
15 or witnesses that corroborated the fact that Javier  
16 Molina gave a shank to Timothy Martinez?

17          A. That they personally saw Molina give the  
18 shank over?

19          Q. All right. Let's start with that.

20          A. No.

21          Q. That knew about it?

22          A. Yes.

23          Q. Who else told you that story?

24          A. Mario Rodriguez.

25          Q. Mario Rodriguez confirmed what Timothy

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1 Martinez had told you?

2 A. Yes.

3 Q. And were you aware that Mario Rodriguez and  
4 Timothy Martinez had been communicating with each  
5 other?

6 A. At which point?

7 Q. Since they decided to cooperate.

8 A. Yes.

9 Q. You're aware that they have been  
10 communicating with each other since they cooperated;  
11 correct?

12 A. Yes.

13 Q. And how do they communicate?

14 A. I believe they do it through their wives or  
15 girlfriends.

16 Q. And have you monitored some of those?

17 A. I have not.

18 Q. Do you have reason to believe that they are  
19 comparing their stories, shoring each other up?

20 A. I do not.

21 Q. You do not?

22 A. No.

23 Q. What do you think they talk about?

24 A. I'm not sure. I don't monitor those calls.

25 MR. CASTELLANO: Objection, Your Honor.

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1 Moving away from the statements themselves again.

2 THE COURT: It sounds like we're moving  
3 away. Do you have a way to tie it a little closer?

4 MR. JEWKES: We'll move on, Your Honor.

5 If I may have just a moment, Your Honor?

6 THE COURT: You may.

7 Q. Agent Stemo, Government's Exhibit 16, the  
8 transcript of a conversation allegedly between Mr.  
9 Perez and a confidential human source, you know who  
10 that confidential human source is; correct?

11 A. I do.

12 Q. And I believe his name would be Billy  
13 Cordova, would it not?

14 A. Correct.

15 Q. And how long has Mr. Cordova been  
16 cooperating in this investigation?

17 A. I'm not sure exactly.

18 Q. Has he been cooperating since you joined  
19 the investigation?

20 A. I believe so.

21 Q. And Mr. Cordova has worn a wire into the  
22 penitentiary system, has he not?

23 A. Yes.

24 Q. And it was given to him by the FBI?

25 A. Yes.

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1 Q. And Mr. Cordova is a paid informant, is he  
2 not?

3 MR. CASTELLANO: Same objection regarding  
4 statements, Your Honor.

5 THE COURT: Sustained.

6 MR. JEWKES: Pass the witness.

7 THE COURT: Thank you, Mr. Jewkes.

8 Other defense counsel that wish to ask --  
9 cross-examine Ms. Stemo? Mr. Adams?

10 EXAMINATION

11 BY MR. ADAMS:

12 Q. So you referenced one statement related to  
13 the Marcantel conspiracy?

14 A. I did.

15 Q. From Jerry Armenta?

16 A. Yes.

17 Q. And that was: Robert Martinez told Jerry  
18 Armenta that Robert Martinez and Roy Paul Martinez  
19 put a hit order out on Marcantel?

20 A. Correct.

21 Q. All right. When was this statement  
22 allegedly made?

23 A. The statement from Robert Martinez to Jerry  
24 Armenta?

25 Q. Correct.

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1 A. I don't know.

2 Q. Where was the statement allegedly made?

3 A. PNM.

4 Q. When was Mr. Armenta at PNM?

5 A. I don't know.

6 Q. When was Mr. Robert Martinez at PNM?

7 A. I don't know.

8 Q. Who else was present when this alleged  
9 statement was made?

10 A. I don't know.

11 Q. Where were they at PNM when this statement  
12 was allegedly made?

13 A. X pod.

14 Q. And as you were testifying, you don't know  
15 if that statement was made prior to the arrest in  
16 this case, and the passing of the gun at issue, in  
17 November and December of 2015, or after?

18 A. I'm not sure.

19 Q. And you don't know if it was after the  
20 arrests were made in this case?

21 A. I believe it was before.

22 Q. But you don't know when?

23 A. Correct.

24 Q. So you don't know for sure if it was before  
25 or after?

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1 A. Correct.

2 MR. ADAMS: Thank you.

3 THE COURT: Thank you, Mr. Adams.

4 Ms. Sirignano, I think, wants to give you  
5 something, I think, Mr. Adams.

6 MR. ADAMS: Thank you, Your Honor. I just  
7 had a new thought to follow-up on.

8 Q. Do you have any other corroboration of Mr.  
9 Armenta's assertion that Mr. Robert Martinez made  
10 this statement to him at PNM?

11 A. I don't.

12 MR. ADAMS: Thank you. Do I have any other  
13 thoughts? No. Thank you.

14 THE COURT: Thank you, Mr. Adams. Mr.  
15 Lowry, do you have cross-examination of Ms. Stemo?

16 MR. LOWRY: I may, Your Honor.

17 THE COURT: Mr. Lowry.

18 MR. LOWRY: Briefly.

19 EXAMINATION

20 BY MR. LOWRY:

21 Q. Good morning, Ms. Stemo.

22 A. Good morning.

23 Q. I believe you said you'd interviewed Jerry  
24 Armenta?

25 A. I've been at interviews with him, yes.

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1           Q.     And if I understand things correctly, Mr.  
2 Armenta was housed in the blue pod where the Molina  
3 event happened?

4           A.     I don't know the coloring scheme, but he  
5 was in the pod.

6           Q.     And actually you can see Mr. Armenta on the  
7 video participating in the murder of Mr. Molina?

8           A.     Yes.

9           Q.     And I take it as part of that interview --  
10 how many interviews were you present with Mr.  
11 Armenta?

12          A.     Approximately three.

13          Q.     And I would assume, as your role as FBI  
14 agent, you want to get all of the information you can  
15 from Mr. Armenta to understand exactly what happened?

16          A.     I do my best.

17          Q.     But I would assume -- well, you do your  
18 best to get all the information you can from Mr.  
19 Armenta?

20          A.     Yes.

21          Q.     And you're trained to get all the  
22 information you can from Mr. Armenta?

23          A.     Yes.

24          Q.     And to make sure you get all of that  
25 information from Mr. Armenta, you visit with him

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1       repeatedly?

2           A.     Yes.

3           Q.     In any of your visits with Mr. Armenta did  
4       he ever tell you or the prosecution team that he  
5       heard Mr. Sanchez say, "Fuck, yeah"?

6           A.     Not at any of the interviews I was at.

7           Q.     And again, you wanted to learn everything  
8       you could about what happened in the pod where that  
9       murder took place?

10          A.     Yes.

11          Q.     I want to follow-up with the comment that  
12       Mr. Adams was asking you about, about the Gregg  
13       Marcantel conspiracy, alleged conspiracy. If I  
14       understood your statement correctly, or your  
15       testimony, that Tim Martinez reported that Roy  
16       Martinez had mentioned something about the Gregg  
17       Marcantel hit?

18          A.     No, it was Robert Martinez.

19          Q.     Okay. And Robert Martinez said that to  
20       who?

21          A.     Jerry Armenta.

22          Q.     And according to Mr. Armenta, Roy Martinez  
23       ordered the hit on Gregg Marcantel?

24          A.     Armenta was told by Robert Martinez that --  
25       go ahead.

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1 Q. No, go ahead. Too many Martinezes. I  
2 can't keep them all straight.

3           A.     Timothy Martinez was not involved in this  
4 conversation.   Robert Martinez told Jerry Armenta  
5 that he, Robert, and Roy Martinez had put out hit  
6 order on Marcantel and Santistevan.

7 Q. That those two had?

8 A. Yes.

9 Q. In all of the interviews Mr. Armenta never  
10 said anything about Mr. Baca putting out the hit?

11 | A. Not that I'm aware of.

12 MR. LOWRY: No further questions, Your  
13 Honor.

14 THE COURT: Thank you, Mr. Lowry.

15 Any other defense lawyers wish to  
16 cross-examine Ms. Stemo. Ms. Bhalla?

17 MS. BHALLA: Yes, Your Honor. Thank you.

## EXAMINATION

19 | BY MS. BHALLA:

20 Q. Good morning, Agent Stemo.

21 A. Good morning.

Q. Is it Stemo? Did I say it right?

23 A. Stemo.

Q. Stemo. Okay, thank you.

25 You mentioned earlier that you had had some

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1 conversations with Mario Rodriguez concerning  
2 paperwork that -- when you mentioned Carlos Herrera;  
3 is that correct?

4 A. Correct.

5 Q. And when did Mr. Rodriguez provide you with  
6 that information?

7 A. In October of 2017.

8 Q. And did he say where he was when he had  
9 that conversation that involved Carlos Herrera?

10 A. At Southern.

11 Q. Where specifically in Southern?

12 A. He did not mention where.

13 Q. Okay. So you're not aware of where exactly  
14 the conversation took place?

15 A. No.

16 Q. Did he say when the conversation took  
17 place?

18 A. I believe so, if I can check my report.

19 Q. Yes, please.

20 A. He didn't tell me specifically, and I  
21 didn't write it down specifically in my report. But  
22 I believe it happened on the morning of the murder.

23 Q. Okay. And you're reviewing that report now  
24 to refresh your recollection?

25 A. Yes.

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1           Q.     Do you know whether or not that report has  
2     been provided in discovery yet?

3           A.     I don't think it has.

4           Q.     Okay.

5           MS. BHALLA: Your Honor, I would like the  
6     opportunity to review the report to see what  
7     information it contains. I think that would be  
8     helpful for our cross-examination.

9           THE COURT: Why don't we do this: Why  
10    don't you discuss that with the Government. We're  
11    probably right up against the break here. So why  
12    don't you discuss it during the break, and we can  
13    then discuss it afterwards.

14           MS. BHALLA: Thank you, Your Honor.

15           THE COURT: If you don't reach a resolution  
16    there, can't resolve it.

17           All right. Let's be in recess for about 15  
18    minutes and we'll come back and continue the James  
19    hearing.

20           (The Court stood in recess.)

21           THE COURT: All right. Let's go back on  
22    the record and see if we can keep things moving on  
23    pace. I think Ms. Harbour-Valdez has a sentencing,  
24    so she's left. But we still have Mr. Burke. And I  
25    think Mr. Granberg has had to leave, but we still

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1 have Mr. Mondragon. So I think we're okay.

2 All right. I'll turn it over to you, Ms.

3 Bhalla.

4 MR. CASTELLANO: Your Honor, I just want to  
5 make sure Agent Stemo got her reports back. They  
6 were left out during the break for defense counsel to  
7 review.

8 THE COURT: Did you get them back?

9 THE WITNESS: Yes, sir.

10 THE COURT: Did you get everything you  
11 needed to continue your cross-examination?

12 MS. BHALLA: I did, Your Honor. Thank you.

13 THE COURT: All right. Ms. Bhalla.

14 I'll remind you, Ms. Stemo, that you're  
15 still under oath.

16 THE WITNESS: Yes, Your Honor.

17 THE COURT: All right. Ms. Stemo. Ms.  
18 Bhalla.

19 MS. BHALLA: Thank you, Your Honor.

20 BY MS. BHALLA:

21 Q. I did have a chance to review your report  
22 and I wanted to ask you a question about it. Your  
23 report indicates a conversation that took place  
24 between Mario Rodriguez and Mr. Sanchez about the  
25 paperwork. And the conversation went along the lines

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1 of something that Sanchez indicated, well, "It's  
2 done," and that they were reviewing the paperwork  
3 together. Do you recall that conversation?

4 A. I do.

5 Q. Who relayed that conversation to the  
6 Government?

7 A. Mario Rodriguez.

8 Q. Mario Rodriguez did. Okay.

9 And was it your understanding of that  
10 conversation that Mario Rodriguez and Mr. Sanchez  
11 were reviewing the paperwork together to make a  
12 determination about what to do next?

13 A. Yes.

14 Q. And there is no indication that Mr. Herrera  
15 was present for that conversation in your report, is  
16 there?

17 A. No.

18 Q. Okay. The statement that Mr. Rodriguez  
19 made to you regarding Carlos Herrera, I just want to  
20 draw our attention back to that. Who else was  
21 present during that conversation, do you know?

22 A. I don't.

23 Q. Okay. So you don't know exactly where the  
24 conversation took place, and you don't know how many  
25 people were present for that conversation?

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1           A.     Correct.

2           Q.     And is it your understanding that Mr.  
3           Rodriguez told -- at least told you -- that he  
4           instructed Mr. Herrera not to send the paperwork to  
5           the green pod; is that correct?

6           A.     Yes.

7           Q.     Okay. Are you aware of the statements that  
8           Mr. Urquiza has given in this case? Have you  
9           reviewed any of those statements?

10          A.     Yes.

11          Q.     Okay. And are you aware of a statement  
12        where Mr. Urquiza indicated that when he showed the  
13        paperwork to Mr. Herrera, Mr. Herrera said, "Damn,  
14        that's it?"

15          A.     I don't remember verbatim what it says, but  
16        that sounds similar.

17          Q.     Okay. So you reviewed that statement from  
18        Mr. Urquiza at some point?

19          A.     Yes.

20          Q.     Are you aware of whether or not any 302s  
21        have been completed on Mr. Rodriguez?

22          A.     Yes.

23          Q.     Okay. Do you know how many?

24          A.     I would approximate three.

25          Q.     And do you know the dates of those,

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1 roughly?

2 A. Sometime in October and November, 2017.

3 Q. So all of the 302s on Mr. Rodriguez were  
4 done in October and the November of this year?

5 A. Correct.

6 Q. Okay.

7 MS. BHALLA: Can I have just a moment, Your  
8 Honor.

9 THE COURT: You may.

10 MS. BHALLA: I have nothing further.

11 THE COURT: Thank you, Ms. Bhalla.

12 Mr. Villa?

13 MR. VILLA: Thank you, Your Honor.

14 EXAMINATION

15 BY MR. VILLA:

16 Q. Good morning, Agent Stemo.

17 A. Good morning.

18 Q. Let me talk briefly to you about Jerry  
19 Armenta. If I understand it correctly, you weren't  
20 present for the debriefs or statements that Mr.  
21 Armenta gave; correct?

22 A. Correct.

23 Q. But you have reviewed them?

24 A. Some of them, yes.

25 Q. And you've had conversations with Mr.

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1 Armenta?

2 A. Yes.

3 Q. And it's true that in at least the  
4 recordings, or the formal debriefs interviews that  
5 have been disclosed by Mr. Armenta, he never mentions  
6 the source of the shanks used in the murder; correct?

7 A. I believe so.

8 Q. So he never says "Dan Dan" told me it came  
9 from Rudy Perez' walker?

10 A. I believe so.

11 Q. He never says Mario Rodriguez said the  
12 shanks came from Rudy Perez' walker?

13 A. I don't think he does.

14 Q. So let's talk about Mario Rodriguez. You  
15 testified that he said Daniel -- and sometimes I say  
16 "Dan Dan." I apologize. That's Daniel Sanchez,  
17 right?

18 A. Correct.

19 Q. So if I say "Dan Dan," you know who I'm  
20 talking about?

21 A. I do.

22 Q. You said that Mario Rodriguez told Mr.  
23 Sanchez that he wanted to be involved or he wanted to  
24 volunteer for the Javier Molina murder; correct?

25 A. Correct.

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1 Q. But Daniel Sanchez told him not to?

2 A. Correct.

3 Q. Do you know why?

4 A. No, I don't.

5 Q. Did you ask Mario Rodriguez why?

6 A. No.

7 Q. Did he ever say why?

8 A. I believe Daniel Sanchez did not want Mario  
9 Rodriguez involved because he wanted Timothy Martinez  
10 involved. There had been an incident in which Daniel  
11 Sanchez had been complaining about Javier Molina and  
12 Timothy Martinez having dope and food and having  
13 meals without inviting others. And Daniel Sanchez  
14 was upset about that. And he felt that if Timothy  
15 Martinez was instructed to go, that Timothy Martinez  
16 would refuse, and Daniel Sanchez could then have a  
17 reason to hit Timothy Martinez.

18 Q. So if Timothy Martinez, as you understood  
19 it, refused the order from Daniel Sanchez, Timothy  
20 Martinez could then be hit?

21 A. Correct.

22 Q. Killed?

23 A. Yes.

24 Q. Or assaulted in some way?

25 A. Yes.

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1 Q. And you understood from Mario Rodriguez  
2 that "Dan Dan" thought that that's what was going to  
3 happen, so now he could hit Timothy Martinez?

4 A. Correct.

5 Q. Because he didn't like him or was upset  
6 with him over this dope issue?

7 A. Yes.

8 Q. And on the flipside, if Timothy Martinez  
9 did do what he was supposed to do, he might get in  
10 trouble, right?

11 A. Who is "he"?

12 Q. Timothy Martinez.

13 A. Correct.

14 Q. So "Dan Dan" probably also understood that  
15 sending Martinez to do this put him in jeopardy of  
16 getting in trouble for committing a murder?

17 A. I don't want to speculate as to what Mr.  
18 Sanchez understood would happen.

19 Q. Okay. Well, let's talk about it with Jerry  
20 Armenta. Did you understand there to be a reason why  
21 Jerry Armenta was asked to do the hit on Javier  
22 Molina in your conversations with Jerry Armenta?

23 A. I believe he had to put in work for the  
24 SNM.

25 Q. Wasn't it also true that there was issues

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1 between Daniel Sanchez and Jerry Armenta?

2 A. Not that I know of.

3 Q. No beef or reason for "Dan Dan" to want to  
4 hit Jerry Armenta?

5 A. Not that I know of.

6 Q. Okay. What about Jerry Montoya?

7 A. If there was a personal issue between  
8 Daniel Sanchez and Jerry Montoya?

9 Q. Yes.

10 A. I'm not aware of any.

11 Q. Were you aware that -- from Lupe Urquizo --  
12 that when he arrived at Southern -- there was some  
13 testimony yesterday -- I know you weren't here -- but  
14 there was an expectation that there was going to be a  
15 hit on Jerry Montoya?

16 A. Yes.

17 Q. You knew about that?

18 A. Yes.

19 Q. Do you know if Daniel Sanchez was aware of  
20 this potential hit going to be put on Jerry Montoya?

21 A. I don't know.

22 Q. Did Mario Rodriguez ever tell you that that  
23 was the reason Daniel Sanchez asked Jerry Montoya to  
24 commit the hit on Javier Molina?

25 A. I don't think he did.

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1 Q. Anybody else?

2 A. Not that I know of.

3 Q. But Mario Rodriguez was clearly intimately  
4 involved in executing this hit, wasn't he?

5 A. Yes.

6 Q. So even though Daniel Sanchez told him not  
7 to do the hit himself, he still had Mario Rodriguez  
8 essentially orchestrate everything that was going to  
9 lead up to this hit; true?

10 A. Yes.

11 Q. And Mario Rodriguez, although they thought  
12 there was a blind spot, is seen on video going into  
13 Javier Molina's room with Timothy Martinez; correct?

14 A. Yes.

15 Q. And minutes or seconds later, Jerry Armenta  
16 and Jerry Montoya go in and start to stab Javier  
17 Molina?

18 A. Correct.

19 Q. And Mario Rodriguez is then seen collecting  
20 one of the shanks, or what is believed to be one of  
21 the shanks used, and hiding it in the shower drain?

22 MR. CASTELLANO: Objection, Your Honor.

23 Moving away from the statements.

24 THE COURT: I think we are. Sustained.

25 Q. So let me ask you about the statement that

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1 you testified Mario Rodriguez told you Rudy Perez  
2 made. You said that Mario Rodriguez went into Mr.  
3 Perez' room; correct?

4 A. Correct.

5 Q. This is the cell in blue pod?

6 A. I'm not sure of the color scheme.

7 Q. Okay. The cell where, or the pod where Mr.  
8 Molina was killed?

9 A. Correct.

10 Q. And did Mario Rodriguez tell you the  
11 purpose for which he went into Rudy Perez' room?

12 A. Mario Rodriguez stated that Daniel Sanchez  
13 called him over to Perez' cell. And Daniel Sanchez  
14 proceeded to point out a piece on Rudy Perez' walker.  
15 And that's when Rudy Perez made the statement that he  
16 was down for whatever, as long as it wasn't him.

17 Q. Now, let me back this up a little bit. Did  
18 Mario Rodriguez tell you on what day this occurred?

19 A. Not specifically.

20 Q. Did he tell you any sort of timeframe in  
21 relationship to when the murders occurred?

22 A. No. The way I conducted the interview was,  
23 it was kind of chronological from the moment he got  
24 the paperwork to the moment the homicide occurred.

25 Q. Well, when did you understand Mario

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1 Rodriguez to have obtained the paperwork?

2 A. Earlier that morning.

3 Q. The morning of the homicide?

4 A. Correct.

5 Q. Was there any doubt from Mario Rodriguez  
6 that he got it in the morning?

7 A. No.

8 Q. He was pretty clear on when he got it?

9 A. He was.

10 Q. Did he tell you whether he got the -- or  
11 went into Mr. Perez' room, before or after that time?

12 A. After he received the paperwork?

13 Q. Yes.

14 A. He received it after he received the  
15 paperwork -- or he went in, sorry.

16 Q. So he went to Mr. Perez' room sometime  
17 after he got the paperwork?

18 A. Correct.

19 Q. Do you know if it was still morning?  
20 Afternoon?

21 A. I don't. All I know is he went into Perez'  
22 cell, retrieved the metal before count.

23 Q. Do you know if there was any conversation  
24 by Mr. Perez about how that removing a piece of metal  
25 might affect the ability for him to use his walker?

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1 A. No.

2 Q. Are you familiar with Mr. Perez' state of  
3 health at the time?

4 A. I'm not.

5 Q. So you didn't know whether he needed that  
6 walker in order to walk?

7 A. I do not.

8 Q. Have you since this time examined the  
9 walker?

10 A. I have not.

11 Q. So you don't know whether it still works or  
12 not without this supposed missing piece?

13 A. I do not.

14 Q. Do you know where the walker is?

15 A. I do not.

16 Q. Do you know if it's gone? Lost?

17 MR. CASTELLANO: Objection, Your Honor.

18 THE COURT: Sustained.

19 Q. Isn't it true that, as Mario Rodriguez was  
20 going into Mr. Perez' room, he observed that Daniel  
21 Sanchez and Mr. Perez were having a conversation?

22 A. Correct.

23 Q. And he couldn't hear what was said in that  
24 conversation?

25 A. Correct.

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1 Q. That being Mario Rodriguez, couldn't hear  
2 the conversation between Daniel Sanchez and Rudy  
3 Perez?

4 A. Correct.

5 Q. And when he saw Rudy Perez, before Rudy  
6 Perez made that statement, Rudy Perez looked scared  
7 to him?

8 A. He did.

9 Q. That's what Mario Rodriguez told you?

10 A. Correct.

11 Q. That Mr. Perez looked scared?

12 A. Correct.

13 Q. Not excited, not pumped up and ready to go;  
14 scared?

15 A. Yes.

16 Q. And after he made the statement to Mario  
17 Rodriguez that he was down for whatever, as you said,  
18 Mario Rodriguez understood that Rudy Perez just  
19 didn't want to get hurt?

20 A. Correct.

21 Q. Because if Rudy Perez had said no, or put  
22 up a fight, much like Timothy Martinez' situation,  
23 Rudy Perez could have been in trouble?

24 A. I believe so.

25 Q. In danger of getting hit himself?

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1 A. I believe so.

2 Q. Do you know if there is any video that  
3 captures Mario Rodriguez obtaining a piece from Rudy  
4 Perez' walker?

5 A. I do not.

6 Q. Do you know if the video cameras are  
7 capable of capturing that?

8 MR. CASTELLANO: Objection, Your Honor.

9 MR. VILLA: I think this goes to the  
10 issue --

11 THE COURT: I'll allow this question.

12 A. I do not.

13 Q. Let me turn your attention now to Exhibit  
14 16, which I have here. I'm going to put it on the  
15 Elmo. The date of the recording is indicated on the  
16 first page of Government's Exhibit 16; correct?

17 A. Yes.

18 Q. And it's February -- we don't have a day --  
19 the year 2016?

20 A. Yes.

21 Q. That's 23 months after the Javier Molina  
22 murder?

23 A. Sure?

24 Q. Are you unsure?

25 A. I don't know if I'm good at math to tell

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1 you the exact months.

2 Q. Well, I'm no good at math either, but the  
3 Javier Molina murder occurred March 7, 2014; correct?

4 A. Yes.

5 Q. And March 7, 2016, would have been two  
6 years or 24 months later; correct?

7 A. Correct.

8 Q. So sometime in February is approximately 23  
9 months?

10 A. Okay.

11 Q. Is that fair?

12 A. Yes.

13 Q. So well after the fact?

14 A. Yes.

15 Q. And as you told Mr. Jewkes, the CHS or  
16 individual on this recording talking to Mr. Perez is  
17 Billy Cordova?

18 A. Correct.

19 Q. This recording occurred at PNM?

20 A. I believe so.

21 Q. Were you present at PNM when this was  
22 taking place?

23 A. I was not.

24 Q. Were you assisting in this operation of Mr.  
25 Cordova recording Mr. Perez?

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1 A. I was not.

2 Q. Who was?

3 A. Other FBI special agents.

4 Q. Do you know who they are?

5 A. I'm not sure exactly. I could tell you who  
6 is on the SNM investigation team.

7 Q. Well, that's okay. If you're not sure.

8 Mr. Jewkes asked you if Mr. Cordova was  
9 wearing a wire. But it wasn't exactly a wire, was  
10 it?

11 A. No, that's just the term a lot of people  
12 use for recording devices.

13 Q. So it was a digital recording device?

14 A. Correct.

15 Q. Like a little one that you can just turn on  
16 and off and record things?

17 A. Yes.

18 Q. And at the time Mr. Perez was in, you said  
19 PNM -- was it Level 6?

20 A. I don't know.

21 Q. Okay. Do you know how long he'd been there  
22 at PNM?

23 A. I don't.

24 Q. Do you know whether he had been kept in  
25 what I call solitary confinement, what the Department

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1 of Corrections calls Administrative Segregation?

2 A. I don't.

3 Q. Do you have any idea of the basis for why  
4 Mr. Perez was at PNM?

5 A. I don't.

6 Q. Do you know why Mr. Cordova was at PNM?

7 A. I don't.

8 Q. Do you know which cells they were in?

9 A. I don't.

10 Q. Do you know that this communication took  
11 place while they were both in cells adjacent to each  
12 other?

13 A. I don't know that.

14 Q. Did you actually listen to the recording?

15 A. I haven't.

16 Q. You just read the transcript?

17 A. Correct.

18 Q. Have you spoken to Billy Cordova about this  
19 transcript?

20 A. I have not.

21 Q. Have you been present when another agent or  
22 individual part of your team spoke to him about this?

23 A. No.

24 Q. Do you know whether Billy Cordova provided  
25 Mr. Perez Suboxone before questioning him about this?

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1 A. I do not know that.

2 Q. Are you aware of any investigation into  
3 whether Billy Cordova had Suboxone?

4 A. I don't know.

5 Q. Were you aware of Mr. Perez' medical state,  
6 now 23 months later, in February, 2016?

7 A. I don't know.

8 Q. You do know that the first indictment in  
9 this case occurred a couple months before this, in  
10 the fall, November, December, 2015?

11 A. Yes.

12 Q. Mr. Perez was not included in that  
13 indictment?

14 A. Yes.

15 Q. He was not?

16 A. I believe so.

17 Q. Were you aware whether there were rumors  
18 that Mr. Perez was cooperating with the Government at  
19 the time, February 2016?

20 A. I was not aware of that.

21 Q. Have you reviewed any other recordings  
22 between Rudy Perez and Billy Cordova?

23 A. I've read over some of the transcripts. I  
24 haven't listened to the recordings.

25 Q. And are you familiar with the transcript in

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1 which Billy Cordova refers to these rumors, saying to  
2 Rudy Perez: "Is this why the carnales or home boys  
3 are talking shit about you?"

4 A. Yes.

5 Q. So you're aware of that?

6 A. Yes.

7 Q. And that statement was made by Billy  
8 Cordova to Rudy Perez before Rudy Perez made this  
9 statement?

10 A. I'm not sure which transcript I read that  
11 in. So I don't know which order those statements  
12 were made.

13 Q. Fair enough. Would you agree with me that  
14 some of these individuals that you've been  
15 investigating here in SNM will take responsibility  
16 for things they did not do?

17 A. I don't know that.

18 Q. Do you know whether that's something that  
19 you guys are on the lookout for or aware of?

20 A. We try to find that, yes.

21 Q. Okay. So let me direct your attention --  
22 I'm going to zoom in. This is page 20531, USA versus  
23 DeLeon, page 20531 of Exhibit 16. And I'm showing  
24 you the bottom statement by Mr. Perez which is  
25 highlighted in pink. Do you see that?

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1 A. I do.

2 Q. Did you do the pink highlights?

3 A. I did not.

4 Q. Okay. You would have done yellow maybe?

5 A. What was that?

6 Q. Would you have done yellow maybe?

7 A. I don't know.

8 Q. I'm just kidding.

9 So Mr. Perez says here, and I'm just going  
10 to read along, "Que watcha, they come to me and  
11 they're like, look big dog, something has to be taken  
12 care of, but we need squina. You don't have to do  
13 nothing. You don't have to do nada. You don't have  
14 to do fuck. We just need that. You know what I'm  
15 saying? Do you understand what I'm saying?"

16 Did I read that right?

17 A. Yes.

18 Q. And that's what you understand Mr. Perez to  
19 be saying, right?

20 A. Yes.

21 Q. And then the CHS, or Mr. Cordova, says,  
22 "They just need that piece from the walker," right?

23 A. Yes.

24 Q. So he's trying to clarify what Mr. Perez  
25 said?

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1 A. Correct.

2 Q. So going back to Mr. Perez' statement. Do  
3 you know what squina means?

4 A. I do.

5 Q. What does it mean?

6 A. It's like giving someone support.

7 Q. Helping them out?

8 A. Yes.

9 Q. And later on, Mr. Perez essentially says --  
10 I won't read through it -- but you would agree with  
11 me that Mr. Perez in this statement is purportedly  
12 telling Billy Cordova that he wanted to help him out,  
13 right?

14 A. Correct.

15 Q. He was cool with it?

16 A. Yes.

17 Q. Because it was a legitimate hit?

18 A. Correct.

19 Q. Right. That's what he told Billy Cordova?

20 A. Yes.

21 Q. Two years later?

22 A. Yes.

23 Q. While they were rumors that he, Mr. Perez,  
24 was cooperating?

25 A. Yes.

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1 Q. Right. And that doesn't sound like  
2 somebody who turned over a piece of metal because he  
3 was scared, does it?

4 A. I don't know.

5 Q. And I think my question is answered on this  
6 that, because you haven't listened to the audio  
7 recordings, you don't know whether the transcript  
8 here, Exhibit 16, accurately reflects the recording?

9 | A. No, I don't.

10 Q. Have you reviewed any of the documentation  
11 regarding Mr. Perez' placement at PNM around the time  
12 this statement was given?

13 A. I have not.

14 Q. Have you reviewed any of Mr. Perez'  
15 documentation from the Department of Corrections  
16 about why he was at PNM?

17 A. I have not.

18 Q. You were asked by Mr. Jewkes if you knew  
19 how long Mr. Cordova had been cooperating. I think  
20 you said you weren't sure?

21 A. Correct.

22 Q. But that he had been cooperating since you  
23 joined the investigation?

24 MR. CASTELLANO: Objection, Your Honor.

25 | Beyond the scope of the statements.

1           THE COURT: Well, I think we're getting a  
2 little further. Let's rein it in. Sustained.

3           MR. VILLA: May I have just a moment?

4           THE COURT: You may.

5           MR. VILLA: Judge, that's all the questions  
6 I have.

7           I would like the Court to reconsider  
8 Government's Exhibit 16, given the testimony we just  
9 heard from Agent Stemo. I still stand on my  
10 objection regarding the due process issue. But, you  
11 know, this transcript -- I think there is a lack of  
12 authentication. We don't have a recording. Agent  
13 Stemo has not listened to the recording, is unable to  
14 say whether this transcript accurately reflects the  
15 recording. She simply read it and has presented the  
16 substance of it. I don't think that's sufficient for  
17 the Court to consider it in the context of this James  
18 hearing.

19           THE COURT: All right. Well, I'm going to  
20 leave it in. And I'll consider it for the weight of  
21 the evidence. I think we -- if somebody points out  
22 problems with the transcript, then I can deal with  
23 those. But it's going to be -- I think we all know  
24 how hard it is to work from the audiotape. So I'll  
25 keep it in for the present time.

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1           All right. Anything else, Mr. Villa?

2           MR. VILLA: No, Your Honor.

3           THE COURT: All right. Any other defense  
4 lawyer that wants to cross-examine Ms. Stemo? Mr.  
5 Adams?

6           MR. ADAMS: No, sir, Judge. I just -- we  
7 would join the motion as to Exhibit 16. I don't know  
8 if you need us to state that or we can all  
9 implicitly --

10          THE COURT: I understand the objection.

11          Mr. Lowry, do you have anything?

12          MR. LOWRY: No, sir, Your Honor.

13          THE COURT: Ms. Jacks? Anybody?

14          All right. Mr. Castellano, do you have  
15 redirect of Ms. Stemo?

16          MR. CASTELLANO: I do. And for the record,  
17 Your Honor, if the Court is inclined, we can also  
18 produce the audio of that recording.

19          THE COURT: Well, it might be wise. I  
20 think it would stem that objection, that people will  
21 have both in evidence and they can point out any  
22 discrepancy between the two.

23          MR. CASTELLANO: Yes, sir. We'll do our  
24 best to provide it on a CD or DVD.

25          THE COURT: Any objection to the audio

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1 coming in? Let's mark it as Exhibit 16 A. Does that  
2 give anybody heartburn to go that direction?

3 MS. JACKS: Your Honor, I think the defense  
4 would reserve any objection regarding the  
5 voluntariness of the statement.

6 THE COURT: I understand. Just to address  
7 this issue that Mr. Villa is raising, but the one on  
8 due process we'll still have to deal with.

9 MR. VILLA: And we could do it on a break  
10 or something. But if we could just have an  
11 opportunity to examine it. I don't want any other  
12 recordings to be admitted. I think it's just going  
13 to be copied onto a CD, if I understand Mr.  
14 Castellano.

15 MR. CASTELLANO: That is the plan, Your  
16 Honor.

17 MR. VILLA: With that, and our other  
18 reserved objections, that's it.

19 THE COURT: All right. Mr. Castellano.

20 EXAMINATION

21 BY MR. CASTELLANO:

22 Q. Agent Stemo, this is -- I have a different  
23 copy of Exhibit 16, I put on the visualizer. It's  
24 DeLeon page 20532. And do you see that portion of  
25 the conversation regarding whether or not Mr. Perez

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1 would not have provided the walkers, had it just been  
2 a personal issue?

3 A. I see that.

4 Q. So there is an indication there that Mr.  
5 Perez indicated that if it wasn't family business, he  
6 would have refused to provide the shanks?

7 A. Correct.

8 Q. And you mentioned meetings with Mr.  
9 Rodriguez. Are you aware that the first meeting with  
10 him in October was merely to present the case against  
11 him, and for the Government to show the evidence that  
12 was to be used against him?

13 A. Yes.

14 Q. And not for the purpose of cooperation?

15 A. Correct.

16 Q. Are you aware of other people's statements  
17 indicating that "Dan Dan" or Daniel Sanchez didn't  
18 want the cameras to be covered because he wanted to  
19 actually be seen on camera?

20 A. That sounds familiar.

21 Q. In other words, he wanted to be seen not  
22 involved in the murder?

23 A. Correct.

24 Q. Now, I want to make sure there is not any  
25 confusion here. You were asked earlier about

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1 benefits discussed with Mr. Rodriguez. Do you recall  
2 whether or not you discussed benefits with him?

3 A. I did not personally.

4 Q. Okay. Now, do you recall whether or not  
5 benefits were the subject of the conversations with  
6 Mr. Rodriguez?

7 A. They were.

8 Q. So, for example, were you aware of him  
9 being -- asked to move to a facility where there  
10 would not be gang members?

11 A. Yes.

12 Q. Would you consider that a benefit?

13 A. Yes.

14 Q. And would that facility have possibly  
15 provided additional visits?

16 A. Yes.

17 Q. Was a discussion about whether or not money  
18 could be placed on his books or his commissary?

19 A. There was.

20 Q. And was there a discussion about whether or  
21 not cooperation could result in a reduced sentence?

22 A. Yes.

23 MR. CASTELLANO: Pass the witness, Your  
24 Honor.

25 THE COURT: All right. Thank you, Mr.

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1 Castellano.

2 All right. Ms. Stemo, you may step down.

3 THE WITNESS: Thank you, Your Honor.

4 THE COURT: Thank you for your testimony.

5 All right. If I remember correctly, Mr.  
6 Castellano, you now wanted to move to the Daubert  
7 hearings?

8 MR. CASTELLANO: Yes, sir, please.

9 THE COURT: Or, I guess, Rodriguez  
10 hearings, depending on how we want to proceed.

11 MR. CASTELLANO: Yes, sir. We would prefer  
12 to do that, if it's okay with the Court. And then we  
13 will afterwards present additional statements.

14 DAUBERT/RODRIGUEZ HEARING

15 THE COURT: All right. Who is your first  
16 expert?

17 MS. ARMIJO: Ron Martin.

18 THE COURT: All right. Mr. Martin, if  
19 you'll come up and stand next to the witness box.  
20 Before you're seated, Ms. Solis will --

21 MR. SINDEL: Your Honor, we would invoke  
22 the rule.

23 THE COURT: All right. I think we have  
24 experts here. So are you -- I guess some of this  
25 might get into factual testimony. Since some of

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1       these are going to be fact witnesses/experts, while  
2       we're sorting things out, so why don't I go ahead and  
3       invoke the rule. Otherwise, we're just going to be  
4       bleeding back and forth between whether they're fact  
5       witnesses or experts. So who is your other expert or  
6       fact witness that's here?

7                    MR. CASTELLANO: Your Honor, Mr. Cupit is  
8       sitting in the back of the courtroom, and of course,  
9       we have the case agent remaining at the table.

10                  THE COURT: All right. Mr. Acee can  
11       remain. Who is the other expert?

12                  MR. CASTELLANO: Chris Cupit. He's with  
13       the New Mexico Corrections Department.

14                  THE COURT: Mr. Cupit, you'll need to step  
15       outside. Do not discuss your testimony with anyone  
16       before you testify. You can discuss it with the  
17       attorneys, but otherwise, you'll need to remain  
18       outside and not discuss your testimony.

19                  RONALD MARTIN,  
20       after having been first duly sworn under oath,  
21       was questioned and testified as follows:

22                  DIRECT EXAMINATION

23                  THE CLERK: Have a seat and state your full  
24       name for the record.

25                  THE WITNESS: Ronald Martin. M-A-R-T-I-N.

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1                   THE COURT: Mr. Martin. Ms. Armijo.

2 BY MS. ARMIJO:

3 Q. Good morning, Mr. Martin.

4 A. Good morning.

5 Q. Where are you employed?

6 A. I'm employed for the Department of  
7 Corrections, New Mexico Department of Corrections.

8 Q. And how long have you worked for the  
9 Corrections Department?

10 A. I have worked for the Department of  
11 Corrections for 17 years.

12 Q. And how did you start, what was your first  
13 position there?

14 A. My first position was as a correctional  
15 officer.

16 Q. And what are the duties of a correctional  
17 officer?

18 A. There are several different types of  
19 duties, but mainly our duties as correctional  
20 officers are for the safety and security of the  
21 prison, which means that we monitor the inmates  
22 that -- if they're assigned in our area, for example,  
23 if I worked in a pod area, I make sure that the  
24 inmates are alive and there is no escapes, or that  
25 they're fed, or in the general population that

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1       they're allowed to go to medical or they're allowed  
2       to see a caseworker; in a segregation unit, that they  
3       are allotted things they can't get to, like, for  
4       example, toiletries; sometimes acting as a liaison to  
5       property officers, caseworkers, unit managers. But  
6       mainly to monitor and make sure that there is  
7       safety -- safety of the inmates and the staff.

8           Q. And how long were you in the position of a  
9       correctional officer?

10          A. I was a correctional officer, I believe,  
11       for about eight years or so.

12          Q. And what were the different facilities that  
13       you were assigned to?

14          A. I was assigned at Penitentiary of New  
15       Mexico. I've worked at Los Lunas Correctional  
16       Facility. And I've worked at the Southern New Mexico  
17       Correctional Facility.

18          Q. Okay. What was the next position that you  
19       held after -- and in that capacity -- let me back  
20       up -- as a correctional officer, did you have daily  
21       contact, daily as in your workday, contact with  
22       inmates?

23          A. Yes.

24          Q. And what was next position that you held?

25          A. The next position was STIU officer at

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1 Southern New Mexico Correctional Facility. I  
2 transferred over to the Penitentiary of New Mexico,  
3 where I was a sergeant for the last three years. So  
4 I spent a total of 11 years in the Security Threat  
5 Intelligence Unit.

6 Q. Okay. And we'll get back to that. What is  
7 your current assignment?

8 A. My current assignment is Office of  
9 Professional Standards, which means I'm an internal  
10 investigator.

11 Q. Okay. And when did that one start, that  
12 position?

13 A. That position started now in November.

14 Q. So you're brand-new to that position?

15 A. Brand-new, yes.

16 Q. Let's go back to the STIU. What does STIU  
17 stand for?

18 A. STIU is a gang unit, but the titles are  
19 Security Threat Intelligence Unit.

20 Q. Okay. And I am going to offer into  
21 evidence -- and I don't know if somebody wants to  
22 take the lead from defense counsel for some of the  
23 documents. Anybody else have an objection to Exhibit  
24 17?

25 This is going to be Government's Exhibit

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1       17, which I am marking into evidence without  
2       objection.

3                   THE COURT: All right. Any objection? All  
4       right. Government's Exhibit 17 will be admitted into  
5       evidence.

6                   Q. All right. And I'm placing it there on the  
7       Elmo. Are you familiar with this item?

8                   A. Yes, I am.

9                   Q. Okay. Now, you indicated that you were  
10      with the STIU, and in different capacities and at  
11      different facilities I'm assuming?

12                  A. Correct.

13                  Q. Okay, what is the Security Threat  
14      Intelligence Unit?

15                  A. The Security Threat Intelligence Unit was  
16      established, I believe, in 1998, after the Department  
17      of Corrections -- once they were coming out of the  
18      Duran Consent Decree. We had a high level of gangs  
19      that were -- we really didn't have a lot of  
20      information on, or there wasn't a lot of information.  
21      So we kind of copied -- we didn't reinvent the wheel,  
22      but we kind of copied what other states had and we  
23      built a Security Gang Unit. The function of it is to  
24      monitor gang activity, monitor street gangs coming  
25      into the prison system, and to basically keep the

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1 safety and security of the prison in order. And we  
2 report to the wardens where we work.

3 Q. And were you in that unit starting back in  
4 2006?

5 A. Yes, I was.

6 Q. So that was -- you mentioned the purpose of  
7 the STIU. And on the screen is the first paragraph  
8 of your CV. Does that also contain some of the  
9 duties that you had and worked on while you were in  
10 STIU?

11 A. Yes, it does.

12 (Ms. Harbour-Valdez entered the courtroom.)

13 Q. Have you heard the term STG?

14 A. Yes.

15 Q. What does that stand for?

16 A. That's Security Threat Groups.

17 Q. What are Security Threat Groups?

18 A. Security Threat Groups are prison gangs  
19 that have been identified as prison gangs that are  
20 disruptive to the normal operation of a prison. And  
21 we go through an investigation point, and we gather  
22 information to corroborate and confirm that a unit or  
23 an organization, such as a prison gang, has become a  
24 threat. And we certify them. And during that  
25 process, we segregate them from the rest of the

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1 population.

2 Q. Okay. Certification of an STG, what does  
3 that include?

4 A. It includes a lot of corroborating  
5 information, documentation on assaults that have  
6 happened, and interviewing inmates, interviewing  
7 individuals that have dropped out of the gang,  
8 particular gangs, interviewing active members of that  
9 Security Threat Group. Basically, it's a long  
10 process.

11 The one I did on the California Surenos  
12 took at least two years, a two-year process. And  
13 this comes with corroboration with outside law  
14 enforcement, to include other states, like  
15 California, Nevada, any area where we can find  
16 individuals that are -- that belong to that gang, or  
17 other facilities within the New Mexico Corrections  
18 Department, to include jails that have documentation  
19 that violent acts have taken place, or that there is  
20 security threats involving murders or intimidation of  
21 staff, intimidation of other inmates, or a lot of  
22 drugs coming in, or officers or staff being taken  
23 advantage of.

24 Q. Now, that process that you talked about,  
25 the certification to be an STG, are all prison gangs

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1 STGs?

2 A. No, they're not.

3 Q. Okay. How many different prison gangs are  
4 there, just roughly?

5 A. Roughly possibly about seven.

6 Q. And how many are STGs?

7 A. Three.

8 Q. And what are the three STGs?

9 A. The three STGs are the Syndicato de Nuevo  
10 Mexico; Los Carnales, the LC; and the California  
11 Surenos.

12 Q. And which one of those three was first  
13 designated by the New Mexico Corrections Department  
14 as an STG?

15 A. The Syndicato de Nuevo Mexico.

16 Q. Is that also known as SNM?

17 A. Yes, it is.

18 Q. Now, going back a little bit to your job in  
19 STIU, in addition to the things that you were talking  
20 about, and what's listed, does that also include  
21 talking to inmates?

22 A. Yes, it does.

23 Q. On how many occasions do you think, in your  
24 career with the Corrections Department, have you had  
25 an opportunity to talk -- and I don't mean just like:

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1       Hello, how you doing, or you know, moving people -- I  
2       mean had conversation with inmates where you were  
3       able to gather information from them?

4           A.    That's hard to say. I would say into the  
5       thousands.

6           Q.    And what would be some of those different  
7       types of encounters that would have included those?  
8       Like under what circumstances would you talk to them?

9           A.    Well, different circumstances. For  
10       example, if they come into our RDC. RDC is a  
11       diagnostic center where -- every inmate first comes  
12       into our prison system goes through a diagnostic  
13       center, and they're classified. We have STIU  
14       personnel in that that identify them. They either  
15       self-identify that they're a street gang member or  
16       they identify that they're a prison gang member, or  
17       we identify them by tattoos, by markings.

18           And at other times, if there has been an  
19       assault happening in our prisons, we'll interview  
20       both victim and the suspect, and we'll also interview  
21       individuals that have been in the pod before or have  
22       any knowledge of any of the incidents that have  
23       happened.

24           When we're doing security threat  
25       assessments, mood assessments, we'll interview

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1 inmates. If an individual is claiming protective  
2 custody, we'll interview that individual as to why  
3 he's asking for protective custody. If we're  
4 interviewing an individual that wants to leave the  
5 gang life and renounce his gang, we'll also talk to  
6 him or them.

7 There is multiple reasons. Anything that  
8 has to do with a security of the institution, most  
9 likely we'll talk to them: Drug interdiction, drugs  
10 being found in the cells, shanks being found in the  
11 cells, any number of reasons that would include a  
12 security threat issue, we'll most likely talk to  
13 them.

14 Q. And do you also have opportunities to read  
15 some of these individuals' communications, written  
16 communications?

17 A. Yes. As a unit, we sometimes will flag  
18 certain individuals that we believe are conducting  
19 business that we deem a security threat. For  
20 example, individuals that are trying to bring drugs  
21 into our facility, or individuals that may pose a  
22 threat, as far as we may have heard that one  
23 individual is not getting along with another  
24 individual, and there might be an assault that  
25 occurs. And we monitor that pretty closely. And

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1       that's how we -- we would monitor their mail.

2           Q.     I'm going to be marking into evidence  
3                   Exhibit Number 18, which is the -- what is an STIU  
4                   packet on an individual?

5           A.     An STIU packet?

6           Q.     Yes. Or is there a more proper name for  
7                   it?

8           A.     A packet would be, if an individual comes  
9                   in and he's either a street gang member or prison  
10                  gang member, we try to get as much information as we  
11                  can from -- and put it into a packet, specifically  
12                  under that inmate. And the reason that we do this  
13                  is, for example, if there is letters written from one  
14                  inmate to another inmate, and it's relevant to us  
15                  that there is business being discussed in it, then if  
16                  we have found that a certain individual was a suspect  
17                  into this gang, this would give us more evidence to  
18                  validate that individual as being part of that gang,  
19                  if there is gang business being discussed.

20                  But those are several of the reasons,  
21                  several different reasons why we would put it into a  
22                  packet. Just information purposes. Because if we go  
23                  to court, and let's say, for example, a gang member  
24                  refutes the fact that he was put into or identified  
25                  into a certain gang, then we have all the information

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1 necessary to counter that and say, Well, we have this  
2 evidence to prove that you are part of that gang.

3 Q. Is part of the packet the process that  
4 Corrections uses to determine if a person is a  
5 suspected gang member or a gang member or verified by  
6 corrections gang member?

7 A. Yes. We have a criteria that would -- that  
8 we follow to either suspect or validate.

9 MS. ARMIJO: And, Your Honor, at this time,  
10 I'm going to move in Exhibit Number 18, which I've  
11 shown to Mr. Baca's counsel. That has been disclosed  
12 as Mr. Baca's STIU packet. And I believe Mr. Baca's  
13 attorney does not oppose --

14 MS. JACKS: What is the Bates number?

15 MS. ARMIJO: It starts Bates 11275, and  
16 continues to 11441.

17 THE COURT: All right. Any objection to  
18 Government's Exhibit 18?

19 MS. DUNCAN: Your Honor, we don't have any  
20 objection to her using it for demonstrative purposes,  
21 but we object to the accuracy of any information  
22 contained herein.

23 THE COURT: I didn't hear all that you  
24 said. I'm sorry.

25 MS. DUNCAN: I haven't had a chance to look

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1 over the whole document, Your Honor. But we don't  
2 object to it being used for demonstrative purposes.

3 But --

4 THE COURT: I'm not sure your microphone is  
5 on.

6 MS. DUNCAN: Your Honor, we're not opposed  
7 to using this pen pack for demonstrative purposes,  
8 but obviously, we don't agree that any of the  
9 information contained therein or all the information  
10 contained therein is accurate or true.

11 THE COURT: All right. But it doesn't  
12 sound like you object to it coming in as evidence; is  
13 that correct?

14 MS. DUNCAN: I guess not for the truth of  
15 the matter. But I understand that Ms. Armijo is  
16 using it just to show how the classification works.  
17 So I don't object to it on that ground.

18 THE COURT: Well, if that's the only  
19 objection, I'm going to admit Government's Exhibit  
20 18.

21 Did you have something, Mr. Castle?

22 MR. CASTLE: Yes, Your Honor. I believe  
23 this is only being offered for the purposes of this  
24 hearing. But I don't really know what the purpose is  
25 in admitting it. I do have a number of questions

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1 concerning the exhibit, which could be classified as  
2 voir dire, but if the Court would allow, I can just  
3 combine that with my cross-examination at the time,  
4 and the Court can conditionally admit this and make a  
5 final ruling at that time.

6 THE COURT: Do you want to do voir dire at  
7 this time?

8 MS. ARMIJO: You can do the voir dire.

9 THE COURT: Go ahead, Mr. Castle.

10 VOIR DIRE EXAMINATION

11 BY MR. CASTLE:

12 Q. Agent Martin, did you have an opportunity  
13 to look at Exhibit 18 prior to testifying today?

14 A. No, I have not.

15 Q. So you don't know what's in it?

16 A. No.

17 MR. CASTLE: I object to 18.

18 THE COURT: Well, I don't think there is  
19 any doubt what this document is. It's coming into  
20 evidence.

21 MR. CASTLE: Then I'm going to ask for some  
22 additional questions, if that's all right, Your  
23 Honor.

24 BY MR. CASTLE:

25 Q. If you could look at Exhibit 18 and tell me

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1       whether you authored any of the documents contained  
2       therein?

3           A. No, I don't believe I have. But I'm  
4       familiar with most of the documentation.

5           Q. How are you familiar with the  
6       documentation?

7           A. I reviewed it.

8           Q. You reviewed it in preparation for today  
9       or --

10          A. No, I reviewed it before as part of my job.

11          Q. Would it be fair to say that Exhibit 18  
12       contains a variety of different documents, different  
13       types?

14          A. Yes, from STIU.

15          Q. I'm sorry?

16          A. From the STIU department, yes.

17          Q. Now, when these files or these folders or  
18       packets are produced, are they ever purged of  
19       material as long as the person is in custody?

20          A. I'm not sure I understand your question.

21          Q. Well, are items taken out of the packet  
22       ever, or are they just added to the packet?

23          A. I suppose on some occasions some things  
24       could be removed, but mostly added.

25          Q. What would be the occasions where items

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1       would be removed from an individual's security threat  
2       or STIU packet?

3           A.     If the coordinator had done an audit on the  
4       packet and found that it had no -- it wasn't related  
5       to anything that would be classified gang activity,  
6       it would probably be removed.

7           Q.     So who would have access to this packet?

8           A.     STIU staff.

9           Q.     So anyone in the STIU staff could access a  
10      particular packet?

11        A.     They could review it, yes.

12        Q.     And could they add to it or remove from it,  
13      anyone in the STIU unit?

14        A.     They could add to it. They cannot remove.

15        Q.     Who can remove them?

16        A.     The administrator.

17        Q.     Is there a particular -- is that a singular  
18      person, or is there multiple administrators?

19        A.     Well, the way it works is, let's say, for  
20      example, that the coordinator did an audit and found  
21      on a validated individual, a gang validated  
22      individual, that there was information in there that  
23      was not valid, relevant to gang activity, then the  
24      coordinator could make a request to the administrator  
25      that it be removed. And that's the process that we'd

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1 have to follow.

2 Q. And if such happened, would there be some  
3 kind of a memorandum within the packet that indicated  
4 what had been removed?

5 A. There would probably be -- I don't think  
6 that would be in the packet, no. That would probably  
7 be correspondence between the administrator and the  
8 coordinator.

9 Q. And where would that correspondence be  
10 filed, if not in the packet?

11 A. I do not know.

12 Q. Now, just leafing through this packet, it  
13 contains interviews of individual inmates at the  
14 facility; is that right?

15 A. Correct.

16 Q. And that would be by STIU officers or  
17 corrections officers?

18 A. STIU personnel, or -- let's say, for  
19 example, a unit manager or a caseworker did an  
20 interview, and during that interview there was  
21 information regarding gang activity, and that would  
22 be turned over to us. And if we're going through  
23 mail scan, and there was a letter written from one  
24 inmate to another inmate that contained gang  
25 information, that would also be included in there.

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1 Q. You talked about some security threat  
2 interviews that are conducted by STIU officers --

3 A. Correct.

4 Q. -- right? Those are contained within this  
5 packet or some of them are?

6 A. No, we don't always put them all in that  
7 packet, no.

8 Q. No, I'm not saying that all of them are.  
9 But some of them are in this packet; is that right?  
10 There are some security threat officer interviews in  
11 here?

12 A. Only if it pertains to that individual. If  
13 it doesn't, it's not always going to be in there, no.

14 Q. What I'm asking is are there documents  
15 within the file that are investigative reports or  
16 interviews conducted with inmates?

17 A. I suppose there is.

18 Q. Would you like to take a look at one?

19 A. Well, I believe you. There are some, I'm  
20 sure.

21 Q. When those interviews are conducted, would  
22 those be fairly characterized as investigatory  
23 interviews by the STIU officers?

24 A. The file's purpose is for it to contain  
25 gang activity or corroboration that there is

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1       legitimate gang concerns or security concerns. We  
2       don't put every interview that we've had into a gang  
3       packet.

4           Q.     Well, let me show you a document at page,  
5       Bates page 11375.

6           A.     Sure.

7           Q.     Is that a page from this packet, if you'd  
8       look at the lower right-hand corner?

9           A.     Are you asking me if this interview is in  
10      this packet?

11          Q.     No, I'm asking if page 11375, is that a  
12      page that's contained within the packet that's been  
13      identified as Exhibit 18?

14          A.     Yes.

15          Q.     Is that an interview conducted with a  
16      confidential human source?

17          A.     Yes, it is.

18          Q.     And that's with -- who attended that  
19      interview?

20          A.     It appears that it was written by Corianne  
21      (phnetic), an STIU officer at the Penitentiary of  
22      New Mexico.

23          Q.     And also with him was a Special Agent from  
24      the Department of Justice, FBI; is that right?

25          A.     Correct.

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1           Q.     Okay. So would you characterize that  
2 document as an investigatory interview by law  
3 enforcement with an informant in the case?

4           A.     Yes, I would.

5           Q.     Without going through all the materials,  
6 would it be fair to say that the collection of  
7 materials, which you have identified as Exhibit 18,  
8 are all materials that are collected for the purposes  
9 of investigating whether Mr. Baca was a member of a  
10 Security Threat Group?

11          A.     Not only if he's a member, but it tells you  
12 other things as well. Is he a leader in that  
13 organization? Is he a target in that organization?  
14 So it will contain a lot of different things.

15          Q.     But in regards to Exhibit 18, all of this  
16 is information that has been collected by someone  
17 other than you?

18          A.     Correct.

19          Q.     And almost always it would be information  
20 collected by STIU officers or other corrections  
21 officers, and put into written form to include into  
22 the packet?

23          A.     Yes. If it's given to us and the  
24 coordinator finds it to be relevant to put into that  
25 file, then he would give the -- he would say we

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1 should put it into that file.

2 Q. Have you vetted the information contained  
3 within that packet to determine whether it's all  
4 true?

5 A. I have not.

6 MR. CASTLE: Your Honor, at this time, I  
7 would object to it being admitted without limitation,  
8 because this witness neither compiled it, nor is he  
9 the author of any of the documents, nor can he verify  
10 the accuracy of a single document or of the packet in  
11 its whole.

12 If it's being offered merely as an example  
13 of the types of material that are contained within an  
14 STIU file and types of material that this expert  
15 might look at or this proposed expert might look at  
16 in his work, I don't have an objection, if it's for  
17 that purpose.

18 THE COURT: What's the purpose that you're  
19 offering it for? Is it for the truth of all the  
20 matters asserted in it, or is it for some other  
21 purpose? What's the --

22 MS. ARMIJO: Well, Your Honor, it's also a  
23 business record. It's part of -- it's maintained in  
24 the normal course of business. It is added to at or  
25 near the time of the entries. It's part of what the

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1 STIU uses for suspected gang members or gang members  
2 in the verification process in it. It does contain  
3 letters to -- it contains a variety of things.

4 Certainly --

5 THE COURT: Well, I wasn't so concerned  
6 about the hearsay objection. I was just wondering  
7 what do you want me to glean from this document  
8 that's being offered? And maybe that will clear up  
9 some of the problems that the defendants have.

10 MS. ARMIJO: Well, it goes in part to the  
11 witness' explanation of persons that are gang  
12 members, and it also contains the certification  
13 process which, I believe, is important for the Court  
14 to hear and to weigh in considering the amount of  
15 expert testimony that we can get into with this  
16 witness and his knowledge of what's in this package.  
17 And it's specifically, as an example, Mr. Baca.

18 THE COURT: Well, I'm going to admit the  
19 document, and we can argue about what I should and  
20 shouldn't consider from it for purposes of either the  
21 Daubert/Rodriguez hearing. So I'll admit it. I'm  
22 not quite sure what I'm supposed to do with it. But  
23 we can argue that out.

24 All right. So Government's Exhibit 18 will  
25 be admitted into evidence for purposes of this

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1 hearing.

2 MS. SIRIGNANO: Your Honor, if I may enter  
3 an objection just for the record, please?

4 THE COURT: You may.

5 MS. SIRIGNANO: Team Garcia doesn't believe  
6 that this document has been properly -- Your Honor,  
7 I'd just like to lodge this objection for the record.  
8 We don't believe this document has been properly  
9 offered. While I understand that the rules of  
10 evidence aren't necessarily obligatory during these  
11 types of pretrial proceedings, I'd like to lodge that  
12 objection. This is not the proper witness to admit  
13 to evidence in. He has not authored it. While it  
14 might be a business record under the hearsay  
15 exception, he's not the custodian of these records.  
16 He hasn't written anything in these records. And I  
17 believe that this is just the Government's attempt to  
18 get this in before the Court without the proper  
19 witness. Thank you.

20 THE COURT: All right. Ms. Armijo.

21 BY MS. ARMIJO:

22 Q. And Mr. Martin, what we're looking at, just  
23 so we're clear, Exhibit 18, we're looking at it on  
24 the Elmo, what does the face sheet illustrate, which  
25 is Bates 11275?

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1           A. That's a New Mexico Corrections Department  
2 master record entry. This information is collected  
3 at the diagnostic center, Reception and Diagnostic  
4 Center, when an inmate is admitted into the prison  
5 system. Also, it's updated as they do their prison  
6 time.

7           Q. Okay. And I'm going to go to the bottom of  
8 the page. And for instance -- the bottom of the page  
9 we have a couple of different sentences; is that  
10 correct?

11          A. Yes.

12          Q. For instance, there is one that says,  
13 "Sentence began 1990 for" looks like "possession of a  
14 deadly weapon." And then there is another entry:  
15 "Sentence began 2004," with a sentence of "998.7  
16 years for murder in the first degree and possession  
17 of a deadly weapon"?

18          A. Correct.

19          Q. All right. Now, going to the second page,  
20 what is it that we're looking at? Are you familiar  
21 with this form?

22          A. Yes, I am.

23          Q. And what is this form?

24          A. This is a form that we use, "STG  
25 Documentation Index," and we mark down documents that

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1 are in the file.

2 Q. So, for instance, that is 5/30/08 -- looks  
3 like it's typed. Is that information that may have  
4 been originally in this file?

5 A. Yes, that would indicate the first photo  
6 that you showed, that escape flier is in the packet.

7 Q. Okay. And does this contain -- under  
8 "document description," does this contain all of the  
9 original information that was contained in the  
10 original packet in May of 2008?

11 A. Yes.

12 Q. Okay. We can see on this page that there  
13 is additional entries in there with dates that are  
14 handwritten. Can you explain that to us?

15 A. Yes, in 2/14/09, the inmate's name is  
16 Anthony Ray Baca; his MDC number to identify his  
17 number for the Corrections Department. The document  
18 description that was added -- it's added documents.  
19 And it was entered by staff entry that would have  
20 been James Mulherron, who was the STIU coordinator at  
21 Southern.

22 Q. Okay. Are all these dates that are  
23 handwritten are dates that things were added to this  
24 file?

25 A. Correct.

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1 Q. And this page would document that?

2 A. Yes, it would.

3 Q. And I'm going to the next page, which is  
4 the third page in the packet. Are you familiar with  
5 what is on the screen?

6 A. Yes, I am. It's a criteria that we use for  
7 suspecting or validating members of an STG group.

8 Q. An STG group or member?

9 A. Member, I'm sorry.

10 Q. Okay. And tell us how it works.

11 A. If we interview the individual and he  
12 self-admits that he is a member of that group, we  
13 would put -- we would -- the criteria would be slided  
14 off. So self-admission would also indicate a tattoo,  
15 so a tattoo would indicate self-admission as well.

16 Symbolism: If there is any symbolism, such  
17 as codes or signs or tattoos that are used by this  
18 gang to indicate that they have membership in it, and  
19 documents that we found, maybe writing to another  
20 gang member, and within that they have, for example,  
21 the SNM symbol, a Zia with an SNM in it, or the  
22 Surenos with the Nahautl lettering, three dots and  
23 two lines. So different gangs will have different  
24 identifiers, depending on symbolism.

25 So anything within that, that we find on

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1 documentation, anything that we find that can give us  
2 more information or intelligence that this individual  
3 belongs to that group, then that verifies that he's  
4 most likely a member of that group.

5 And then the point system -- we work by the  
6 point system. So the criteria here would indicate  
7 that all the marks -- the markings that were marked  
8 off add two points. So at the end of it, on 5/13/11,  
9 when they did this, the total criteria that was met  
10 was 29 points. And the minimum criteria that we have  
11 to meet is 10.

12 Q. Okay. So in order for the STIU to indicate  
13 that a person is a validated gang member on this  
14 sheet, they would have to reach 10 points; is that  
15 correct?

16 A. Ten points, correct.

17 Q. And at least as of the last entries on  
18 this, Mr. Baca had met 29; is that correct?

19 A. Correct.

20 Q. So does Corrections consider him a  
21 validated gang member?

22 A. Yes, they do.

23 Q. Of what gang?

24 A. The Syndicato de Nuevo Mexico.

25 Q. You were talking a little bit about stuff,

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1 and we will leave that on there, because I want to  
2 talk about the SNM.

3                   Are you familiar -- did you have an  
4 opportunity to read Document 1299, which was the  
5 United States expert notice and motion in limine to  
6 admit gang witness expert testimony, which contained  
7 proposed expert testimony from you and two other  
8 persons?

9                   A. Yes.

10                  Q. And did you, in reference to the proposed  
11 expert testimony that's listed out on pages 1 through  
12 6 of that document, do you agree with all of what's  
13 written on that document, after having a chance to  
14 review it?

15                  A. Yes.

16                  Q. Now, what is the SNM?

17                  A. The SNM is a prison gang in the New Mexico  
18 Department of Corrections, that has been certified as  
19 a disruptive -- I mean a Security Threat Group.

20                  Q. And I'm going to -- before you get any  
21 further, I think I have -- do you know when it was  
22 certified -- oh, wait I think I -- hold on, let me  
23 get to something here. I'm referring to Bates stamp  
24 11278, which is in Exhibit 18. Are you familiar with  
25 this document?

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1 A. Yes, I am.

2 Q. And what is it that we're looking at?

3 A. It's a memorandum to the Director of Adult  
4 Prisons, John Shanks, from the Security Threat Task  
5 Force. The subject is Syndicato de Nuevo Mexico,  
6 certification of Security Threat Group. So this was  
7 offered up to Mr. Shanks at the time, and he  
8 concurred that, with all the information that was  
9 provided, that the Syndicato de Nuevo Mexico was  
10 considered a Security Threat Group.

11 Q. So was this when they actually became an  
12 official Security Threat Group?

13 A. Yes, once it's signed, absolutely.

14 Q. Okay. So February 8, 1999; is that  
15 correct?

16 A. Correct.

17 Q. Now, when did -- do you know when the  
18 SNM -- have you had an opportunity -- let me lay a  
19 little bit of foundation. Have you had an  
20 opportunity to interact with SNM Gang members?

21 A. Yes, I have.

22 Q. In what capacity?

23 A. As a correctional officer, as a Security  
24 Threat Intelligence Unit officer, basically that's  
25 it.

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1 Q. So in your time in Corrections?

2 A. Yes, while working in Corrections, correct.

3 Q. And also during that time, I believe you  
4 testified earlier about the different circumstances  
5 that you've talked to individuals. Would that apply  
6 to SNM Gang members?

7 A. Yes, it would.

8 Q. And through that, have you gained  
9 information about the SNM?

10 A. Yes, I have.

11 Q. And have you had any training about prison  
12 groups?

13 A. Yes, I have.

14 Q. And I believe it's listed on your -- you  
15 have your qualifications on your CV. In addition to  
16 that, have you given trainings?

17 A. Yes, I have.

18 Q. And when did you start being an instructor  
19 on prison groups?

20 A. I started being an instructor, I believe,  
21 in 2010.

22 Q. Now, specifically as to the SNM, you  
23 indicated, I believe earlier, that STIU was created  
24 in -- was it 1998?

25 A. Yes. It was called the Security Threat

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1 Groups Intelligence Unit, which was later changed to  
2 Security Threat Intelligence Unit.

3 Q. And then, in 1999, we have our first  
4 certified security threat group; is that correct?

5 A. Correct.

6 Q. Now, what sort of activities is the SNM  
7 involved in?

8 A. The SNM, are you talking about?

9 Q. Let's start in the prison.

10 A. In the prison system?

11 Q. In the prison system.

12 A. Well, in the prison system, they're  
13 involved in the control of, mainly of narcotics,  
14 narcotics coming into the prison, trying to control  
15 other gangs that are involved in narcotics in the  
16 prison. For example, if there is another -- if there  
17 was another group bringing in drugs to the prison,  
18 they would be taxed, and they would have to give some  
19 of that money to the SNM, because they were bigger  
20 and more powerful and more viable.

21 So anything -- any underground economy that  
22 goes into the prison, for example, of selling goods,  
23 contraband, the selling of shanks, the selling of  
24 narcotics; protection, if an individual needed  
25 protection, he'd have to pay protection money. Also

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1 rat money. If an individual wanted to live in peace,  
2 and he belonged to no other gang, he might be forced  
3 to pay a protection tax.

4 Q. Okay. Those are --

5 A. Pretty much anything that they could make  
6 money on, or that would make money for the  
7 organization, they were involved in it.

8 Q. What about violent crimes? Are they in any  
9 way associated with prison gangs?

10 A. Yes. They differ a little bit, like, for  
11 example, from the Mexican Mafia. The Mexican Mafia  
12 is a violent group as well, and -- but their primary  
13 goal is to make as much money as they can, and tax as  
14 many inmates, not only inside the prison, but outside  
15 the prison, to collect money. The SNM is mainly  
16 known for violence. They're known that they're a  
17 very violent organization.

18 Q. And okay, and how so?

19 A. They prey on the weaker inmates. And if  
20 orders are not followed within the organization, it  
21 could result in violent retaliation against its own  
22 members.

23 Q. Do they have a structure, the SNM?

24 A. Yes, they do.

25 Q. What kind of structure do they have?

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1           A. At the beginning, they had what I would  
2 call a Don, who was a jefe, who was a guy that's in  
3 charge. At the time, it was Juan Baca. He was the  
4 originator. And he basically wanted to structure the  
5 SNM after the Mexican Mafia, which would only allow  
6 individuals that were violent into the group. As it  
7 changed later on, after Juan Baca left, you had Angel  
8 Munoz, "Papa Smurf," who went by the moniker of "Papa  
9 Smurf." "Papa Smurf" would allow individuals to come  
10 into SNM not to commit violent acts sometimes, but if  
11 he had a drug connection or -- his primary focus was  
12 to control the drug market.

13           Q. And about -- what time period is this  
14 approximately?

15           A. This is in the '90s. It started off in the  
16 '80s, the early '80s, right after the prison riot.  
17 And in the '90s, when Juan Baca was gone, Angel Munoz  
18 took over, and what he would have was a table of  
19 individuals that he would call captains. He put  
20 captains on the boards. And those captains would  
21 then have soldiers underneath them. And those  
22 soldiers -- primarily, if you brought an individual  
23 into the SNM, he pretty much fell under you. But he,  
24 had a table or a tabla, what they called, of  
25 individuals that were captains. And then a Don at

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1 the top.

2 Q. Now, has that structure varied throughout  
3 the years?

4 A. It has, yes.

5 Q. And how so?

6 A. When we removed a lot of individuals that  
7 we knew were high ranking members within the SNM, and  
8 we moved them out of state, our objective was kind of  
9 to cut the head off the snake. At this time, other  
10 individuals started to take rein of -- well, control  
11 of the SNM. And there was a lot of infighting within  
12 the SNM, because they didn't believe that one leader  
13 was either going in the right direction or that he  
14 had individuals that were plotting against other  
15 individuals. So a lot of jealousy and a lot of  
16 bickering started. So you would have what you would  
17 call different cliques within the SNM. Yet, overall,  
18 if something were to happen, they would still come  
19 together as a unit. But there was a bunch of  
20 different cliques that would say, "I'm not following  
21 this guy," for example. They would say, "I'm not  
22 following 'Styx.' I'm going to follow" --

23 Q. Who is "Styx"?

24 A. Gerald Archuleta. Or they would say, "I'm  
25 following 'Shotgun.' "

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1 Q. Who is "Shotgun"?

2 A. Arturo Torrez.

3 Q. Okay.

4 A. Arturo -- I think that's right.

5 But they would have different individuals  
6 following different groups. And that's what brought  
7 in a lot of the infighting.

8 And then, in 2008 or 2009, we had an  
9 individual that came back into our prison system as  
10 one of the main leaders, and started taking control  
11 of the SNM again.

12 Q. And who was that?

13 A. Anthony Ray Baca.

14 Q. Now, have you had conversations with Mr.  
15 Baca?

16 A. Yes, I have.

17 Q. Have you -- on more than one occasion?

18 A. Yes.

19 Q. Now, when you indicated 2008, 2009, he came  
20 in and he took control of it?

21 A. Right. Mr. Baca was -- I believe in 1997  
22 or '98, he was transferred out of state, to the  
23 Nevada Department of Corrections. He returned back  
24 to the New Mexico Department of Corrections, I  
25 believe in 2008 or 2009. And he went through -- I

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1 believe he was put back at the Penitentiary of New  
2 Mexico, and then transferred to Southern New Mexico.

3 Q. Now, are there -- there are several  
4 different correctional facilities in the state;  
5 correct?

6 A. Correct.

7 Q. Now, are there basically, though, two main  
8 campuses, for lack of a better word, in which your  
9 STG members will be held?

10 A. Yes. SNM, in particular, was housed at  
11 Southern. The population setting was set at  
12 Southern.

13 PNM was used as -- it's more of a place  
14 where we have segregation. And it's a program,  
15 basically, where they have to go if they go to  
16 segregation. It's a step-down program that would  
17 take them from the Level 6 to the Level 5, and then  
18 return back to a Level 4 setting, which the SNM was  
19 categorized as a Level 4 population setting.

20 THE COURT: Ms. Armijo, is this a pretty  
21 good time --

22 MS. ARMIJO: Oh, sure, Your Honor.

23 THE COURT: All right. Why don't we take  
24 our lunch break now. See you back in about an hour.  
25 Shoot for that. We'll be in recess.

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1 (The Court stood in recess.)

2 THE COURT: All right. Everyone ready to  
3 go? Mr. Martin, if I could have you return to the  
4 witness box. Does everybody have counsel?

5 (Mr. Burke is no longer in attendance.)

6 THE COURT: All right. We'll go back on  
7 the record. Let's everybody try to keep it closer to  
8 an hour, rather than an hour and 15 minutes in  
9 getting back from lunch. That delays everybody.

10 MR. DAVIS: Judge, I apologize. This is my  
11 fault. I just completely mistook the time. So I  
12 apologize, Judge.

13                   THE COURT: All right. Two things, one is  
14 the CJA lawyers have been asking Ms. Wild for a CJA  
15 meeting. I don't know if we're going to get it  
16 squeezed in. We're losing some time today getting  
17 lawyers and defendants into the courtroom, so we're  
18 losing some time today. So I don't know if we'll  
19 have the meeting. But I can tell you this, every CJA  
20 voucher that I have been presented with is signed and  
21 on its way back, or already in Albuquerque. Every  
22 motion that has been presented to me by the  
23 defendants has been signed and either is in Fed Ex  
24 packages or already there. So if that's of any  
25 comfort to anybody, anything there is. If we need a

1 CJA meeting, we can have it. But every request that  
2 I know of has been dealt with.

3                 Secondly, I'm going to begin to turn  
4 attention from the disqualification motion to  
5 something else. And so, unless somebody proposes  
6 other work they would like me to concentrate on a  
7 little bit more in detail or either reconsider or  
8 rethink, I'm going to turn to Shauna Gutierrez's  
9 motion to dismiss. I said I'd take a look at that.  
10 So unless somebody has got a better candidate, that's  
11 what I'm going to turn to.

12                 So be thinking of that. When I leave here  
13 tomorrow, I certainly want a batting order of things  
14 the parties want me to work on in greater detail.  
15 Let me get -- let's see, Mr. Burke is gone. So he is  
16 gone. But we do have Ms. Harbour-Valdez.

17                 What we did here to move things along, all  
18 the voucher numbers were sent to Ms. Wild and she's  
19 already processed. So any voucher is processed, so  
20 that's where we stand on any vouchers. Okay.

21                 So Mr. Burke is gone. Anybody else leave  
22 us during the lunch hour? All right.

23                 All right. Mr. Martin, I'll remind you  
24 that you're still under oath.

25                 THE WITNESS: Yes, sir.

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1                   THE COURT: Did you have something you  
2 wanted to take up before Ms. Armijo continues the  
3 direct examination of Mr. Martin, Mr. Castellano?

4                   MR. CASTELLANO: Yes. Just a housekeeping  
5 matter. I have a disc, which is marked Exhibit 16 A.  
6 It's the audio of the transcript that was introduced  
7 this morning. So it will be available for defense  
8 counsel to listen to during a break if they need to.

9                   THE COURT: All right. It has been  
10 admitted into evidence.

11                  All right. Ms. Armijo, if you wish to  
12 continue your direct examination of Mr. Martin, you  
13 may do so at this time.

14                  MS. ARMIJO: Thank you, Your Honor.

15                  THE COURT: Ms. Armijo.

16 BY MS. ARMIJO:

17                  Q. I believe, when we broke for lunch, we were  
18 talking about the different levels of classification.  
19 Can you please explain those again?

20                  A. The different levels the New Mexico  
21 Corrections Department works under is classification  
22 from a Level 1 to a Level 6. The Penitentiary of New  
23 Mexico holds classifications from a Level 6, Level 5,  
24 and Level 4.

25                  Q. And which is the highest security-wise?

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1 A. Level 6 would be the highest.

2 Q. And then I think you had mentioned before  
3 lunch that up at the PNM it's people working down  
4 from 6 to go back to 4?

5 A. Right. With the new administration that we  
6 have gotten, the classification kind of changed a  
7 little bit, where the north facility is Level 6.  
8 It's called the predatory management program where  
9 individuals are locked up for a period of about four  
10 months, and they work themselves into congregate  
11 movement.

12 Q. And how does that differ from Southern?

13 A. Southern is a population prison. It's a  
14 Level 3. A level 3 and Level 4 -- Level 3, Level 4,  
15 and it holds some segregated inmates, which are Level  
16 6.

17 Q. Now, at this point in time, was a  
18 determination made that the SNM members would be held  
19 down there?

20 A. Yes. I believe that they've been held down  
21 there, wow, maybe since 2003, they've been down  
22 there, or even longer than that.

23 Q. All right. Are you aware of the Castillo  
24 and Garza murders?

25 A. Yes, I am.

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1           Q.     Okay.  And if those occurred in 2001, would  
2 they have been held down there, in 2001?

3           A.     Yes.  At that time, they were still in the  
4 population setting.  So they were certified as a  
5 security prison group.  But there was still members  
6 that were out in the -- so it was an ongoing process.  
7 It was a new process to us.  So it was an ongoing  
8 process.  So we -- after the murders is when we  
9 started segregating members of the SNM into their own  
10 population setting.

11          Q.     After the murders of whom?

12          A.     Of Garza and --

13          Q.     Castillo?

14          A.     Castillo, yes.

15          Q.     And now, I believe you were talking a  
16 little bit about the structure of the SNM and  
17 leadership.  How does somebody become a member?

18          A.     A member usually is brought in by -- he has  
19 to be voted on by -- by the hierarchy.  So, for  
20 example, if I'm already an SNM member, and I want to  
21 bring someone in that I know is pretty credible, and  
22 he meets the criteria for the gang, then I'll  
23 introduce him, and I have to vouch for him.  I  
24 believe that not only I, but two other members would  
25 have to vouch for him as well; that he would be in

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1 good standing. And after a period of orientation, if  
2 you would call it that, then he would be allowed in.

3 In the early '80s and into the mid '90s,  
4 that individual was obligated to commit some kind of  
5 a violent act in order to show his loyalty to the  
6 gang, if you will. Their motto at the time was blood  
7 in-blood out. You bring blood to get in, and you  
8 can't get out unless you're taken out by blood.

9 Q. Now, are you aware of whether or not things  
10 more recently than the '80s and '90s have been a  
11 little bit more relaxed about that?

12 A. Yes, I believe they have. We haven't seen  
13 so much of that. There has been, like the murder of  
14 Freddie Sanchez; that was considered a hit because he  
15 ratted to law enforcement. Also, there has been  
16 individuals that have left for religious purposes,  
17 and they have been let go. And now we created a  
18 program called Restoration Into Population, which is  
19 basically a dropout unit, a gang dropout unit. So  
20 that's another area or an avenue of individuals that  
21 can take that route.

22 I haven't seen a lot of -- I haven't really  
23 seen any -- in the 2000s I haven't seen really  
24 anybody get murdered or heard of anyone getting  
25 murdered because they wanted out of a gang.

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1           Q.     All right. But what about rules of the  
2     gang?

3           A.     Yeah. They have rules. And they've  
4     changed as well. At the beginning, they had rules;  
5     the three rules that existed were: You don't snitch  
6     on anyone. That's an automatic -- they would murder  
7     you. You don't leave a brother hanging or a carnale  
8     hanging. That was also -- so there was a rule of  
9     where you either were beat up; that was a sanction,  
10    you were either beat up, you were either stabbed, or  
11    you were killed.

12           I believe that some of those rules have  
13    flexed a lot, and they changed the way that they  
14    operated.

15           Q.     What about the rule as to cooperators? Are  
16    cooperators seen as people who should be killed?

17           A.     Absolutely. They're seen as snitches or  
18    rats.

19           Q.     And are you familiar with the murders that  
20    are charged in this case? And I can -- you don't  
21    have the indictment in front of you. Are you aware  
22    of the motive for the Javier Molina -- let's use that  
23    as an example?

24           A.     Yes, I am.

25           Q.     And what was the motive behind the killing

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1 of Javier Molina?

2 A. The motive behind killing Molina was there  
3 was written documentation on law enforcement that he  
4 had told on someone else or provided information to  
5 law enforcement on someone else. So basically  
6 ratting.

7 Q. Have you heard the term "paperwork"?

8 A. Yes.

9 Q. What does that refer to?

10 A. They refer to that, in order to move on a  
11 brother or a carnal, they have to have it in black  
12 and white. So it's got to be written documentation  
13 that offers proof that this person indeed ratted.

14 Q. And if that person did, in fact, rat, what  
15 happens?

16 A. It's an automatic death sentence.

17 Q. Now, are you familiar with the murder of  
18 Freddie Sanchez?

19 A. Yes, I am.

20 Q. And how are you aware of that murder?

21 A. I conducted an interview with Mr. Sanchez  
22 before he was killed.

23 Q. Was Mr. Sanchez a SNM Gang member?

24 A. Yes, he was a validated SNM Gang member.

25 Q. Was he in good standing when he was killed?

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1 A. No, he was not.

2 Q. And why not?

3 A. There was documentation that Mr. Sanchez  
4 had provided information to law enforcement in  
5 Roswell.

6 Q. And did Mr. Sanchez know that he was not in  
7 good standing?

8 A. Yes, he did.

9 Q. Where was he at when you spoke to him?

10 A. He was at Southern Correctional Facility.

11 Q. In reference to his murder, which was in  
12 2007, when exactly did you talk to him, or I should  
13 say approximately when did you talk to him?

14 A. I talked to him approximately three days  
15 before he was murdered. And he was in the  
16 orientation status.

17 Q. What does that mean?

18 A. Orientation status means that when a new  
19 arrival show up at a prison, we keep them in  
20 segregation within the pod, or the unit where  
21 everyone else lives.

22 After a certain amount of time, we have a  
23 committee meeting to involve STIU, the unit managers,  
24 and classification officers. At this point, the  
25 inmate can state whether he feels comfortable living

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1 there, or if maybe other individuals in the pod have  
2 given him a heads-up or have told him that he's going  
3 to be a target for assault, and at this point he can  
4 request to be removed out of that unit.

5 Q. Okay. Is that part of the interviews that  
6 you mentioned earlier, when you were talking about  
7 opportunities that you've had to talk to gang  
8 members?

9 A. That's some of the opportunities, yes.

10 Q. And Mr. Sanchez, was he concerned for his  
11 safety?

12 A. When I spoke to him, he was.

13 Q. Now, what about different ways of  
14 communication between SNM Gang members? Are you  
15 aware of how they communicate, other than just  
16 standing next to each other and talking?

17 A. Yes. Sometimes they'll use sign language  
18 to communicate with one another. Do you mean --

19 Q. I'm sorry? Oh, no, I mean, like -- okay,  
20 if they can't talk to each other, do they send each  
21 other letters?

22 A. Oh, yes. I'm sorry. I didn't understand  
23 your question too well. They will send what you call  
24 kites, which are really small notes they'll pass to  
25 each other. And there is a lot of different ways to

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1 circumvent the security system. Sometimes they'll  
2 send it through the laundry. We do their laundry and  
3 they'll pass notes through the laundry. Or they'll  
4 get the bag and they'll mark the laundry bag belongs  
5 to whomever, the inmate they want to send the kite  
6 to, and the kite usually gets to them. Sometimes  
7 they'll get staff to inadvertently pass letters for  
8 them. Or at other times, they'll situate themselves  
9 where they can end up in the same recreation pen  
10 together, and they're able to talk to each other that  
11 way.

12 Q. What about telephone calls?

13 A. Yes, telephone calls. There is different  
14 ways to do this. Sometimes they'll have a  
15 conversation about absolutely nothing for a long  
16 period of time where, you know, the purpose is to  
17 bore you of the conversation that there is nothing  
18 going on. And for about 10 seconds or so, even less,  
19 they will discuss business. Sometimes they'll use  
20 letters -- I mean words, such as "Washington," which  
21 would interpret them -- meaning themselves, mi  
22 garito, different things like that, that would state  
23 that they're talking about themselves. Or they use  
24 different words for codes to mean different things.  
25 If they're talking about heroin, they might refer to

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1       a singer like Michael Jackson, different things like  
2       that. They'll refer to games, such as soccer games,  
3       for example. If there is a soccer game going on,  
4       they will be on the phone saying: Did you see the  
5       soccer game last night? Yeah. Did you see Juan  
6       scored three goals, which would mean that Juan paid  
7       or didn't pay. If they're mentioning his name, that  
8       means he paid for the dope, or didn't pay for the  
9       dope, different things like that.

10                   Or the females will also pass on messages.  
11          When they're in contact visits, that some of them are  
12       not monitored, some of the visits not monitored, so  
13       that they're able to get a code of only what them two  
14       know what it means. So when they're talking on the  
15       phone, and they pass this code on, then that person  
16       knows exactly what they're talking about, and that's  
17       a harder code to break.

18                   Q. Now, you talked a little bit earlier about  
19       activities within the prison. What about, does SNM  
20       have any activities on the street?

21                   A. Yeah, I believe so. Usually inmates, when  
22       they're getting out of prison would have a -- what  
23       you would call a mission; they would be sent on a  
24       mission. And they were obligated out there to meet  
25       with one another. And usually there was one guy on

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1       the street would be in charge -- let's say, for  
2       example, the Albuquerque area, if you have  
3       individuals in the Albuquerque area, then they were  
4       obligated to meet with each other and conduct  
5       criminal business, or come up with criminal business  
6       in order to send drugs and money back into the prison  
7       system.

8           Q.     And does the SNM Gang even operate outside  
9       the State of New Mexico?

10          A.    In the federal system, yes.

11          Q.    Now, what about rivals? What rivals do  
12       they have?

13          A.    In the '80s and '90s their biggest rival  
14       was the Los Carnales Gang. At this point, I believe  
15       there might be a verbal truce, where there is no  
16       violence with one another.

17               One of their main rivals right now is the  
18       Burquenos and the Barrio Aztecas.

19          Q.    And what happens with rivals; for instance,  
20       if you were to see a rival on the street?

21          A.    Well, if you see a rival, it would be  
22       mandatory that you would assault them or hurt them in  
23       some way, I know in the prison system more than on  
24       the street. I'm not too sure about the street.

25       Because sometimes, especially nowadays, a lot of the

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1 times, you know, they'll sell each other drugs. So,  
2 you know, there might not be that big of a rivalry on  
3 the streets as it is inside the prison system.

4 Q. Are you aware of there being murders that  
5 have been committed for that, and specifically, are  
6 you aware -- do you know who Frederico Munoz is?

7 A. Yes, I do.

8 Q. And who is he?

9 A. He is an ex-SNM member.

10 Q. And while he was an SNM member, are you  
11 aware of a murder that he committed out on the  
12 streets?

13 A. I believe he committed a murder while he  
14 was in the county detention center.

15 Q. All right. And you're not aware of the one  
16 that -- he committed another one out on the street.  
17 Are you aware of that one?

18 MR. SINDEL: Object to the leading form of  
19 the question. She's continuing to testify.

20 THE COURT: I think they're fine.  
21 Overruled.

22 A. I know an individual that he shot out on  
23 the street, yes.

24 Q. Okay. And what was that -- why don't you  
25 tell us about that. What was that in reference to?

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1           A. That was in reference to -- I believe that  
2 he shot Julian Romero. Julian Romero was a high  
3 ranking member of the SNM. Julian Romero had ended  
4 up dating and going with another high ranking  
5 member's -- SNM high ranking member's wife. And  
6 that's an unspoken -- well, it's a no-no within the  
7 gang. And so it was a retaliation for Gerald  
8 Archuleta.

9           Q. And how long has -- so has there been a  
10 green light on Julian Romero?

11          A. As long as I've known, there has always  
12 been a green light on Julian Romero.

13          Q. Now, the person that put the green light  
14 initially, was he at that time in a position of  
15 power?

16          A. Yes, he was.

17          Q. Now, what about tattoos? I believe you  
18 talked about it earlier in reference to trying to  
19 identify them. What kind of tattoos are you familiar  
20 with?

21          A. The tattoos that identify SNM?

22          Q. Yes.

23          A. SNM originally used to use the Zia symbol  
24 with the S in it, or with the SNM emblem inside the  
25 Zia symbol. They've used the number 19, or just the

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1 letter S, or the SNM together. As recent as 2010, I  
2 believe, they started using that Nahautl numerical  
3 Mayan tattoos that symbolized the number 19 for the  
4 letter S.

5 Q. I'm going to be marking -- I believe I'm at  
6 19. Are you familiar, when people come into prison,  
7 I believe you had said earlier sometimes they come  
8 from street gangs; is that correct?

9 A. That's correct.

10 Q. Can you explain how that works?

11 A. Primarily, in Albuquerque, it's one of the  
12 biggest metro areas in the State of New Mexico, so  
13 you get most of your gang members out of Albuquerque.  
14 So you had a wide variety of different gangs in  
15 Albuquerque by itself. You have the West Side Locos.  
16 You have older street gangs like Barelas,  
17 Martineztown, Los Padillas, San Jose, Brewtown.

18 So you have a wide variety of different  
19 street gangs and across the State of New Mexico.  
20 Usually, when they come into the prison system,  
21 they'll have tattoos on themselves, a representation  
22 of their gang, and confirmation when you ask. Most  
23 of them are pretty honest and tell you what gang  
24 they're from.

25 Q. Now -- and how does that feed into when

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1       they go into prison and possibly becoming a member of  
2       the SNM, for instance?

3           A.     Well, it serves for a better purpose.

4       Because in New Mexico, the prison system only holds  
5       about 8,000 inmates, that's to include females. So  
6       we're not that big of a prison system, so somebody  
7       always knows somebody from an area, or they can vouch  
8       for them, as far as who they are or how much work  
9       they put in in the street.

10           In the gang life, the more horrible  
11       criminal activities that you conducted, the better  
12       your stature is inside of a prison, or the better  
13       that you're looked at as an all right guy, a credible  
14       person to be in the gang.

15           MS. ARMIJO: And Your Honor, at this time,  
16       I'm going to move for the admission of Exhibit  
17       numbers 19 through 22; 19 and 20 are photographs of  
18       Mr. Herrera, and 21 and 22 are photographs of Mr.  
19       Baca.

20           THE COURT: Any objection?

21           MS. HARBOUR-VALDEZ: Could you give us the  
22       Bates numbers, Bates stamp?

23           MS. ARMIJO: I don't have them on 21 and  
24       22. But on 19 and 20, it is 8341 and 8356.

25           MR. DAVIS: Judge, on behalf of Mr.

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1 Herrera, with regard to Exhibits 19 and 20, we don't  
2 have any objections to their use at this hearing  
3 only, but we reserve the right to raise objection  
4 later on.

5 THE COURT: Oh, certainly this is just for  
6 purposes of the hearing.

7 Ms. Duncan?

8 MS. DUNCAN: And, Your Honor, on behalf of  
9 Mr. Baca, we take the same position.

10 THE COURT: All right. We'll admit them.  
11 If there are no other objections, Government's  
12 Exhibit 19, 20, 21, and 22, and just admit them for  
13 purposes of the hearing. Ms. Armijo.

14 Q. Showing first Exhibit 19. Can you explain  
15 what we're looking at?

16 A. In the abdomen area of Mr. Herrera he has a  
17 Zia symbol, with the letter S in the middle, and I  
18 believe the English lettering.

19 Q. And are you familiar with who Mr. Herrera  
20 is?

21 A. Yes, I am.

22 Q. And what is your information about him in  
23 relationship to SNM?

24 A. He was a street gang member with 18th  
25 Street out of Albuquerque. And this I know because

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1 he also had a brother that was an 18th Street Gang  
2 member out of Albuquerque, that was not an SNM  
3 member. But once he came into prison, he became  
4 associated and became part of the SNM Gang. And  
5 that's part of the tattoo that he would put on  
6 himself.

7 Q. All right. So the tattoo that's in the  
8 middle here, is that what you're talking about,  
9 specifically with the S in the middle?

10 A. Yes. The Zia would represent the State of  
11 New Mexico. And the representation of the Zia is to  
12 indicate to other gang members that the SNM controls  
13 the whole State of New Mexico.

14 Q. Now, you were talking earlier about 18th  
15 Street. Are you familiar with this photograph of Mr.  
16 Herrera?

17 A. Yes, I am.

18 Q. And what is it that we see that's  
19 significant in this photograph, and I'm showing  
20 Exhibit 20?

21 A. It's a tattoo of an 18, which would  
22 represent the 18th Street Gang.

23 Q. Now, showing Exhibit 21, what is it that  
24 we're looking at?

25 A. In the middle, again, in the abdomen, Mr.

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1       Baca has in Spanish, "Sindicato de Nuevo Mexico."

2           Q.     Okay. And do you see on top? What does  
3       that say? Can you read that?

4           A.     Barely. Nuevo Mexico Syndicato.

5           Q.     And what about this up here? Duke City?  
6       Do you know what that's in reference to?

7           A.     Yes, that would have referenced that Mr.  
8       Baca is from Albuquerque, and that's symbolism that  
9       the Burquenos would indicate that they're from  
10      Albuquerque.

11          Q.     Right. And I'm showing Exhibit 22 now.  
12      Can you see that?

13          A.     Yes.

14          Q.     And what does that indicate?

15          A.     That would indicate that -- it's a Zia  
16      symbol, I believe.

17          Q.     And I can try and --

18          A.     Yes, it would have an S in the center of  
19      it.

20          Q.     Now, in reference to Mr. Baca, I believe  
21      earlier you had testified that you were aware that  
22      when he came back, he kind of became the leader of  
23      the SNM?

24          A.     Yes. Well, when he left, he was pretty  
25      influential within the SNM.

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1 Q. And what was the reason for him leaving?

2 A. The reason for him leaving is that at the  
3 time the administration and Corrections decided that  
4 they were going to remove who they thought were all  
5 the leader heads of the SNM or influential leaders of  
6 the SNM.

7 Q. And eventually he was brought back to New  
8 Mexico?

9 A. Yes.

10 Q. And since he has been brought, in your  
11 capacity with STIU, did you have conversations with  
12 him?

13 A. Yes, I did.

14 Q. Okay. And can you describe the nature of  
15 the conversations that you had with him?

16 A. When he first came back, I believe he was  
17 transferred from the Penitentiary of New Mexico to  
18 Southern New Mexico. And because we have known that  
19 he was a high ranking member within the SNM, it was  
20 important that we, as an STIU unit, talk to him  
21 first. So I met him at intake when he came in, and I  
22 introduced myself as an STIU officer. And I had  
23 known him from before. And he just asked me where  
24 his familia was placed at.

25 And at that time, all the SNM Gang members

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1       were placed in housing unit 1-A at Southern. They  
2       had their own unit. So I had advised him that he was  
3       going to be placed there. I also advised him that he  
4       would be on an orientation, for a 7-day orientation;  
5       then after that, I would come in and talk to him  
6       again about coming out in congregate movement.

7           Q.     Okay. And when you say "la familia," what  
8       did you take that to mean?

9           A.     The SNM family, his family, the SNM.  
10       Because he had no relatives there. So I've known him  
11       for a long time; I know what he was referring to.

12          Q.     Did you continue to have conversations with  
13       him when you were at the same unit, working STIU,  
14       that he was being housed.

15          A.     Yeah. On occasion, when there would -- if  
16       there was an incident that happened or a situation  
17       that might prove to be a security threat issue, I  
18       would talk not only to him, but to other members of  
19       the SNM in the units. But, yes, I did have  
20       conversations with him.

21          Q.     I'll be showing you Exhibit 23, which is a  
22       photograph, Bates No. 3140.

23           MS. ARMIJO: Your Honor, at this time, we'd  
24       move for the Exhibit 23.

25           THE COURT: Any objection to Government's

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1       Exhibit 23 coming in on the same conditions, just for  
2       the purposes of this hearing, and not for not  
3       purposes of trial?

4                  All right. Mr. Government's Exhibit 23  
5       will be admitted into evidence.

6                  Q. Are you familiar with the picture that is  
7       in Exhibit 23?

8                  A. Yes, I am.

9                  Q. And how so?

10                 A. I believe one of the STIU officers may have  
11       confiscated it or found it in the mail. And I think  
12       it was confiscated from Mr. Baca's property.

13                 Q. Now, photographs in regard to the SNM, are  
14       you familiar with group photographs?

15                 A. Yes, I am.

16                 Q. Okay. Tell us about that.

17                 A. Well, generally, like when SNM was out in  
18       general population, before they were separated from  
19       the general population, usually when they would take  
20       group photographs -- I don't think I ever seen a  
21       group photograph of an individual that was not a  
22       member of the SNM. So, basically, what we would  
23       allow them -- individuals in gangs to do is take  
24       photographs. That would give us a better idea of  
25       identifying them, but specifically the SNM did not

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1 really allow anyone to take a photograph in a group  
2 setting that was not SNM suspected or validated  
3 member.

4 Q. So unless you were in some way associated  
5 with the SNM, you were not allowed to be in group  
6 photographs?

7 A. I don't know if you weren't allowed. I've  
8 just never seen it. So I would imagine you weren't  
9 allowed.

10 Q. Now, in this picture in particular, who is  
11 in the middle?

12 A. In the middle of the photo is marked  
13 "Anthony Ray Baca."

14 Q. And who is next to him, as you look on the  
15 photograph, to the right?

16 A. To the right is Javier Molina.

17 Q. And is that the same Javier Molina that was  
18 killed in 2014?

19 A. Yes, it is.

20 Q. And how about the person on the far end as  
21 we're looking at in the picture, on the left?

22 A. That would be identified as Daniel Sanchez.

23 Q. Do you know approximately when this picture  
24 was taken?

25 A. I believe that was taken right before

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1 Anthony Ray Baca was sent back to PNM. So that could  
2 have been in 2014; 2013, 2014. So I don't think  
3 Daniel Sanchez was up there that long before Mr.  
4 Molina was murdered. So it was approximately about  
5 right before Mr. Baca was sent back to the  
6 Penitentiary of New Mexico.

7 Q. So was there a point in time -- you  
8 indicated that you came down to Southern; is that  
9 correct?

10 A. Yes.

11 Q. And is that when you had the conversation  
12 with him where he said, "Where is my familia?"

13 A. That was the first time that he arrived at  
14 Southern. I think that was in 2009.

15 Q. And then, at some point, did he leave  
16 Southern?

17 A. Yes. We had -- he had left Southern,  
18 because we had gotten information at the time, the  
19 STIU unit that is, had gotten information at Southern  
20 that there was a possible threat on his life. And  
21 the information had come at this time, I believe,  
22 from the Penitentiary of New Mexico.

23 So we interviewed him; the coordinator and  
24 myself had interviewed Mr. Baca, and advised him of  
25 what was happening. And that just err on the side of

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1 caution, that he was going to be locked up. But that  
2 was something that was coming from the administration  
3 at the time, that he was to be locked up.

4 Q. So when you say "locked up," was he moved  
5 somewhere else?

6 A. He was moved back to the Penitentiary of  
7 New Mexico, I believe, in a segregation unit.

8 Q. And then, at some point, did he make it  
9 back down to Southern?

10 A. Yes, he did.

11 Q. All right. And then at some point, did he  
12 go back up to the penitentiary?

13 A. Yes. I believe the second time that he  
14 went up was right after this photograph was taken.

15 MS. ARMIJO: At this time, I'd move for the  
16 admission of Government's Exhibit 24, which is a  
17 letter Bates stamped 4476.

18 THE COURT: Any objection to Government's  
19 Exhibit 24?

20 MS. DUNCAN: On behalf of Mr. Baca, Your  
21 Honor, we have no objection for the purposes of this  
22 hearing only.

23 MS. ARMIJO: It is a letter that is  
24 authored by Mr. Baca.

25 THE COURT: All right. Any other

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1       objections or comments? Government's Exhibit 24 will  
2       be admitted into evidence.

3                   Mr. Adams?

4                   MR. ADAMS: No objection. Just curious  
5       about the Bates number.

6                   MS. ARMIJO: I'm sorry. I said it earlier.  
7       4476.

8                   MR. ADAMS: Okay.

9       BY MS. ARMIJO:

10          Q. All right. Are you familiar with Exhibit  
11       24?

12          A. Yes, I've seen it before.

13          Q. Okay. Where was the first time that you  
14       saw the original version of this?

15          A. The first time I saw the original version,  
16       Mr. Baca showed it to me.

17          Q. And where was that at?

18          A. I believe it was at the Penitentiary of New  
19       Mexico's North facility.

20          Q. And there is a date on it of 2/7/2014.  
21       Would that be approximately when you saw it?

22          A. Yes, that would be about the right time.

23          Q. And did Mr. Baca tell you what the  
24       intention of this letter was?

25          A. Well, Mr. Baca felt that he was being

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1 segregated unfairly with -- he didn't believe that  
2 any of the things people were saying against him were  
3 true or were credible. And so I believe this whole  
4 thing was in frustration of him being locked down.  
5 That's what I remember him conveying in a sense. And  
6 that he was writing this letter to the  
7 administration.

8 Q. Okay. And who was Jay Roarke?

9 A. Jay Roarke was -- I believe he was the  
10 Director of Prisons at the time.

11 Q. And in the beginning it says, "Greetings,  
12 in reference to the interview conducted on 2/6/2014,  
13 I'd like to inform you that I carefully thought over  
14 our discussion, and not only do I agree with your  
15 concerns, but I assure you that I will, upon my  
16 release from Level 6 confinement" -- and then he  
17 gives a series of -- I believe there are four  
18 different things that he lists. And so what did he  
19 tell you that the purpose of this was?

20 A. I believe he was trying to make a deal with  
21 the administration; if they allowed him to go back  
22 into population segregation with the SNM units, that  
23 he would make sure that that these agreements were --  
24 that they were followed, or that he would make sure  
25 that this was the agreement.

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1           Q.     Okay. And is that -- for instance, number  
2 says, "Call a ceasefire between SNM members and all  
3 other STG gang members currently housed at SNM CF  
4 Level 4"?

5           A.     Correct.

6           Q.     Now, going to number 4, it says, "Prevent  
7 SNM members from targeting any and all suspected  
8 validated SNM members who have or wish to subject  
9 themselves to the RPP program." Did you, in  
10 particular, have a conversation with him about that  
11 offer that he was making to Mr. Roarke?

12          A.     Yeah. I think I just made -- I advised him  
13 of a correction on it. That was it. And I think he  
14 had put RIP. And I said, "That might look bad." So  
15 it was actually called RPP. So I just corrected him  
16 on what it was called; RPP, not RIP.

17          Q.     And what is the RPP Program?

18          A.     It's the Restoration Into Population  
19 Program, which gang members that denounce or do no  
20 longer want to be part of the gang can go into this  
21 program.

22          Q.     Now, was Mr. Baca sending this to the  
23 administration as the leader of the SNM?

24               MS. DUNCAN: Objection, Your Honor; that  
25 calls for speculation.

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1                   THE COURT: Well, we better hear what his  
2 opinions are. I'm going to let you all get into  
3 where he's getting these opinions, but we better get  
4 them out on the table. Overruled.

5                   A. Yeah, it was widely known; it wasn't like a  
6 secret or anything like that. It was widely known  
7 that he was, through interviews and self-admission,  
8 that he was the head of the SNM. And, of course,  
9 he's not going to write all these things unless he is  
10 in charge of the SNM. So, in my opinion, yes, he was  
11 writing it as the leader of the SNM.

12                  Q. And you actually discussed this letter with  
13 him before he sent it to Mr. Roarke?

14                  A. I read it.

15                  Q. That's what I should say. You didn't  
16 discuss it with him. But did he show you the letter  
17 before he sent it to Mr. Roarke?

18                  A. Yes.

19                  Q. And was it contemporaneous when he was  
20 writing the letter that you saw it?

21                  A. Yes.

22                  Q. Now, going back to Exhibit 23, you see Mr.  
23 Baca in the middle, right next to Javier Molina, who  
24 is later killed?

25                  A. Correct.

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1           Q.     And what's your opinion of the fact that --  
2 or I should say, do you find it unusual that Mr.  
3 Molina is actually even holding hands with Mr. Baca,  
4 it appears, just within a close time to his death, a  
5 close time even being a year or two, whenever this  
6 photograph was taken?

7           A.    Well, if individuals believe that a guy is  
8 a rat in the unit, that doesn't mean he's a rat. If  
9 they didn't have any paperwork at the time that this  
10 photograph was taken, then there wouldn't be nothing  
11 to -- there would be no argument as to -- they would  
12 have to have what you would call "in black and white"  
13 in order to move on him. So my professional opinion  
14 is that they didn't have the letter at the time this  
15 photograph was taken. So he was a brother or a  
16 carnal at the time, in good standing.

17          Q.    Okay. Even if somebody -- let's say they  
18 suspected him or wanted him to be killed, would that  
19 not have happened unless there was paperwork? Does  
20 that make sense?

21          A.    Yeah. Let's say, for example, that there  
22 is some individuals -- if you don't have the  
23 paperwork, and there is some individuals saying:  
24 This guy is a rat, this guy is no good, I know. And  
25 other individuals are saying, No, you can't do

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1 something. That's not the way we do -- that's not  
2 the way we do things. That's not the way we do  
3 business. We have to have it in black and white.  
4 And people that are highly influenced will have to  
5 say, yes, I believe that this is true after they see  
6 the paperwork, and that would be carried out then.

7 But until then, you know, to be fair to  
8 Molina, you know, they didn't have no paperwork at  
9 the time stating that he was a rat.

10 Q. So there could have been people that -- let  
11 me ask it this way: Could there have been people  
12 that suspected him of being a rat, who wanted him  
13 dead?

14 A. Yes.

15 Q. Prior to this?

16 A. Yes.

17 Q. But what is the trigger that actually gets  
18 the green light carried out?

19 A. Well, there has to be paperwork. And then  
20 the influential leaders or the key holders or leaders  
21 would have to make that decision.

22 Q. Now, are you -- we talked about that. Oh,  
23 just how many different ways have you seen  
24 "Syndicato" spelled?

25 A. I've seen it spelled with S-I-N and S-Y-N.

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1 I've seen it spelled both ways.

2 MS. ARMIJO: And if I could just have a  
3 moment, Your Honor?

4 THE COURT: You may.

5 Q. I believe you've stated this. Just so that  
6 we're clear, what's your opinion on SNM as far as  
7 whether or not they are a prison gang?

8 A. They've been a prison gang for over 30  
9 years.

10 Q. And how many members did they have when  
11 they had the most members?

12 A. Probably about 500.

13 Q. Has that number gone down?

14 A. Yes.

15 MS. ARMIJO: If I may just have a moment.

16 THE COURT: You may.

17 Q. Now, the opinions that you've given about  
18 SNM, I believe earlier you said that you've talked to  
19 thousands of inmates in the course of your 14 years;  
20 is that right?

21 A. Seventeen.

22 Q. Seventeen, see I'm bad at math, too.

23 Seventeen years with New Mexico Corrections.

24 In reference to the SNM, during the course  
25 of time, how many times do you think that you've had

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1       an opportunity to talk to SNM Gang members?

2           A.     Multiple times. There has been a lot of  
3       times; I've talked to a lot of SNM Gang members.  
4       More particular on the individuals that -- when we  
5       started the Restoration Into Population Program, I  
6       was one of the individuals that started that program.  
7       So my whole focus within the gang unit was to try to  
8       talk as many gang members out of being gang members  
9       as possible. That was my whole goal. And if I could  
10      get as many SNM members to get involved in that, I  
11      would.

12           So we've had over 250 inmates go through  
13       that program. And a large population on mostly SNM  
14       Gang members. And I debriefed most of those  
15       individuals. And I've been able to get a lot of  
16       information that corroborates itself as far as gang  
17       structure, codes, the inner workings of the SNM.  
18       I've also spoken to individuals that are on the  
19       streets that were ex-gang members that no longer are;  
20       don't see themselves -- have never been to a  
21       restoration program, but no longer see themselves as  
22       part of SNM, and been able to get a historical  
23       breakdown of the SNM as well.

24           Q.     What about in addition to those people,  
25       either cooperators or people who dropped out, and you

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1 indicated that there has been over 250, the majority  
2 of those are SNM, so is it fair to say of that  
3 category of people, that you've spoken to probably  
4 over 200?

5 A. Yes.

6 Q. Now, in addition to that, have you also had  
7 the opportunity when people are coming down for  
8 orientation, like you spoke earlier about, with Mr.  
9 Baca when he came down to Southern?

10 A. When I was at Southern, primarily, I would  
11 be the one that talked to them when they were going  
12 to orientation, as far as SNM members.

13 Q. Did you talk to, like, Mr. Sanchez when he  
14 came through?

15 A. I was no longer at Southern when Mr.  
16 Sanchez arrived. I was at PNM, but I did interview  
17 Mr. Sanchez before he went to Southern.

18 Q. All right. And so in addition to the  
19 orientation, you talk to people just in the regular  
20 course of business as far as being in STIU; is that  
21 fair to say?

22 A. Yes. One of the things we do is, when they  
23 leave the Level 6 system to go to a Level 5 or a  
24 Level 4, STIU is required to speak with them. And at  
25 that point I did speak to Mr. Daniel Sanchez.

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1           Q. And so is it fair to say that you've  
2 probably -- or how many -- is it over -- we already  
3 counted one group is over 250. Is it in the  
4 hundreds, then, of SNM Gang members that you've  
5 spoken to?

6           A. Yes. Usually, if they were leaving the  
7 Penitentiary of New Mexico and going to Southern, I  
8 would have to speak with them, and then make a  
9 recommendation to the unit managers or to the  
10 administration on whether they should be moved or  
11 not.

12          Q. Do you know if SNM has a particular means  
13 or methods for murdering inmates?

14          A. The method that I've seen used is  
15 strangulation, the most.

16          Q. Have there been other ways, such as  
17 stabbing?

18          A. Stabbings, yes.

19          Q. So now I believe you've talked about  
20 structure and codes of conduct. All the things that  
21 you've testified about, the method of communication,  
22 the operations, and the rival gang and the group  
23 photographs, all those things, are these opinions of  
24 yours -- and we spoke specifically about SNM -- do  
25 those things apply, in general, to prison gangs?

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1           A.     Most of them yes, apply.

2           MS. JACKS: Objection, compound.

3           THE COURT: Overruled.

4           A.     I would say that the majority of prison  
5     gangs have basically the same type of subculture.  
6     The prison gangs, the STGs will operate a little bit  
7     different because they have more structure and more  
8     rules.

9           Q.     All right. So in other words, the STGs,  
10    being SNM, is a little more structured than some of  
11    the others that have not made it to the level of STG?

12          A.     Right. The disruptive groups like  
13    Burquenos or the Cruces Boys, they're not as  
14    structured or organized with the hierarchy like the  
15    SNM. So I guess, in that sense, that would be the  
16    difference.

17          Q.     And I believe you also spoke a difference  
18    earlier about the SNM versus the Mexican Mafia, for  
19    instance?

20          A.     Right.

21          Q.     Now, these opinions of yours, are they  
22    based on your personal observations?

23          A.     No, I've gone through training with the  
24    Bernalillo County Sheriff's Office. I'm a member of  
25    the New Mexico Gang Task Force. I've been -- I've

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1 talked and been instructed by Al Valdez, who is a  
2 leading gang expert in the State of California, who  
3 is also a Ph.D. at Cal-Irving (sic); he's written  
4 over 13 books and he's one of my mentors. And  
5 anytime that I've inquired about gang activity or  
6 gang organizations, he's always freely given me  
7 advice, or sent me books to read, which I've read  
8 four of his books.

9 Q. I guess my question was poorly worded. In  
10 addition to learning about gangs and how prison gangs  
11 work and various prison gangs, in applying it to the  
12 SNM, based on your years of being in Corrections, did  
13 you personally see things like the tattoos and the  
14 conversations, and the conversations and all those  
15 things, does that help with your -- the basis for  
16 your opinion as to SNM?

17 A. Yes, it does.

18 Q. And what about, like, recorded phone calls?  
19 Have you had opportunity to listen to those?

20 A. Yes, I have.

21 Q. And do you base your opinion on recorded  
22 phone calls that you've listened to in reference to  
23 SNM Gang activity?

24 A. I do. And my training within the different  
25 gangs, and knowing the SNM as long as I have.

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1 Q. And intercepted notes?

2 A. Yes.

3 Q. And, for instance, I'm just going to grab  
4 this again. Exhibit 18; for instance, I'm going to  
5 go to Bates 11316, which is in Exhibit 18, you talk  
6 about intercepted notes. Have you ever seen this  
7 before?

8 A. Yes, I have.

9 Q. What is it that we're looking at?

10 A. It is a --

11 Q. And if you can't see it, I can bring it to  
12 you.

13 A. I believe it's a writing on the Aztec  
14 culture, and how -- oh, I'm sorry, now I know what  
15 you're -- it's a breakdown of different counties  
16 within New Mexico, but they're writing it in the  
17 Aztec lettering. And so it looks like it's the start  
18 of a plan of a breakdown of counties.

19 Q. All right. Are you aware that that was  
20 found in Anthony Baca's cell?

21 A. Yes, I am.

22 Q. Now, I didn't do this earlier, but does  
23 this Exhibit 18 have the breakdown, like, for  
24 instance, on Bates stamp 11314, it says, "Category D,  
25 documents, 5 points." Is that how this file is kind

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1 of broken down, where you would have the different  
2 categories under its own --

3 A. Right.

4 Q. Documents under each of the categories?

5 A. Correct.

6 Q. And then, for instance, just as an example  
7 with this one, 1134 then has memos and documents that  
8 were found, including what we were just talking  
9 about, which is 11316; correct?

10 A. Correct.

11 MS. ARMIJO: Thank you. Your Honor, I pass  
12 the witness.

13 THE COURT: All right. Thank you,  
14 Ms. Armijo.

15 All right, let me see. Who wants to start?  
16 Do you want Mr. Castle to start, Ms. Duncan?

17 MS. DUNCAN: That's fine.

18 THE COURT: All right. Mr. Castle.

19 EXAMINATION

20 BY MR. CASTLE:

21 Q. Agent Martin, do you know an individual by  
22 the name of Dwayne Santistevan?

23 A. Yes, I do.

24 Q. And who is he?

25 A. He's a former STIU administrator.

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1           Q. He's no longer employed by the Department  
2 of Corrections?

3           A. No.

4           Q. How about Gregory Marcantel?

5           A. Yes, I do. He's a former Secretary of  
6 Corrections.

7           Q. Did you ever serve under them?

8           A. Yes, I did.

9           Q. And how long did you serve under them?

10          A. Under Dwayne Santistevan, I believe I  
11 served about nine years under him, and Gregg  
12 Marcantel, during his time as Secretary of  
13 Corrections.

14          Q. And to your knowledge, are they both named  
15 victims in the indictment that's before this Court?

16          A. Yes.

17          Q. Agent, what do you believe you are an  
18 expert in?

19          A. Gang culture and subculture of gangs.

20          Q. Does that include street gangs?

21          A. Sure.

22          Q. And all across the country?

23          A. I've studied primarily prison gangs around  
24 the country, yes.

25          Q. So are you holding yourself out as an

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1 expert generally in all kinds of gangs within the  
2 United States?

3 A. Primarily within the prison system of New  
4 Mexico.

5 Q. Are you confining your expertise to prison  
6 gangs within the State of New Mexico?

7 A. Yes.

8 Q. And how long have you been an expert in  
9 this area, or at least you have felt that you've been  
10 an expert in this area?

11 A. Well, I grew up in a gang-infested  
12 neighborhood, so I've been around gang members all my  
13 life.

14 Q. Let me stop you there, let me stop you  
15 there. So what you're saying is, at least as far as  
16 that part, that a person from a gang, the actual  
17 gang, would be able to essentially talk about all the  
18 kinds of details about a gang that you've discussed  
19 today?

20 A. I don't know.

21 Q. Well, we'll just depart for a second and  
22 I'll get back to the original question.

23 A. Okay.

24 Q. The tattoos you were talking about, right?

25 A. Correct.

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1           Q.     How did you learn that those are tattoos  
2     that are used by the SNM Gang?

3           A.     When I first started at Corrections, the  
4     veteran officers explained to me what the SNM tattoos  
5     meant, who the SNM members were. And so they kind of  
6     gave me a breakdown as part of becoming an officer  
7     and learning who was who within the prison system.

8           Q.     How did they find out what the tattoos  
9     meant?

10          A.     I'm sure from time working there. They  
11        were also told, maybe some of the gang members told  
12        them.

13          Q.     Okay. So gang members would know what the  
14        tattoos meant?

15          A.     Correct.

16          Q.     Symbolism that you were talking about in  
17        letters and things like that, I guess code words and  
18        things like that, that the SNM Gang uses, do you  
19        recall testifying about that?

20          A.     Symbolism in letters.

21          Q.     Yes. Terms they used?

22          A.     Different terms that they use.

23          Q.     Yes.

24          A.     Yes.

25          Q.     Where did you learn about that?

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1           A. This was information we received from other  
2 inmates that were SNM Gang members.

3           Q. Okay. So an SNM Gang member could come  
4 into court and tell us all what those symbols mean?

5           A. Well, I learned it from multiple gang  
6 members.

7           Q. So you might have to call -- multiple  
8 members might be able to discuss it?

9           A. I'm just telling you that's where I learned  
10 it.

11          Q. Going back to the expertise. So within --  
12 how long do you believe that you -- well, when did  
13 you become, in your mind, an expert in the prison  
14 gangs in New Mexico?

15          A. Probably after conducting a certification  
16 on the California Surenos, getting them certified as  
17 a Security Threat Group. And I pretty much have  
18 known about gangs for a long time, and I've always  
19 went to conferences or classes on gang  
20 identification, gang subculture, street terrorism,  
21 street gangs.

22          Q. When did you become certified in  
23 California?

24          A. I'm sorry?

25          Q. When did you get that certification on the

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1 California Surenos?

2 A. 2014.

3 Q. 2014, okay. So would you have been an  
4 expert in gangs in 2001?

5 A. 2001?

6 Q. Right.

7 A. I wouldn't call myself a gang expert in  
8 2001.

9 Q. The defendants in this courtroom, can you  
10 identify which individuals you have personally  
11 interviewed?

12 A. I have interviewed -- I believe I've  
13 interviewed the majority of them. Perhaps Joe  
14 Gallegos, I've never interviewed, or his brother.

15 Q. Did you interview Billy Garcia?

16 A. I interviewed Billy Garcia.

17 Q. When?

18 A. When he was at the Penitentiary of New  
19 Mexico, Level 6 system. At that time we had -- I  
20 believe Billy was in a segregation unit for  
21 protective custody issues.

22 Q. When was that, though?

23 A. It might have been 2012, 2013. I'm not  
24 exactly sure when.

25 Q. And did you do a written statement for

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1       Mr. Garcia?

2           A.     Did I get a written statement from him?

3           Q.     Did you produce a written statement?

4           A.     I'm sure I did.

5           Q.     Do you recall what he said to you?

6           A.     Not much.

7           Q.     He didn't want to talk to you?

8           A.     Pretty much he didn't want to talk.

9           Q.     So he wouldn't have -- you wouldn't have  
10      interviewed him about his gang membership and things  
11      of that nature?

12           A.     Well, that was the premises on the  
13      interview was to find out why he was in bad standing  
14      within the SNM, or perceived to be in bad standing  
15      with the SNM. And he offered no comment to that.

16           Q.     So no admissions?

17           A.     No admissions.

18           Q.     What materials did you review in  
19      preparation to offer expert testimony in this case?

20           A.     Eleven years of serving within the New  
21      Mexico Gang Unit.

22           Q.     Well, okay, what materials, paper,  
23      documents, or audiotapes, or media of any kind did  
24      you review to prepare to give expert opinions in this  
25      case?

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1 A. None.

2 Q. What expert opinions precisely are you  
3 giving? Let me kind of explain to you. Agent  
4 Martin, you've talked today a little bit about things  
5 you've experienced personally and observed  
6 personally, right?

7 A. Um-hum.

8 Q. You've talked about things you've read  
9 about, such as four books by your mentor?

10 A. On the Mexican Mafia, yes.

11 Q. And other officers' reports and things like  
12 that; you've reviewed a lot of things, right?

13 A. Correct.

14 Q. So what I want to try to figure out is what  
15 areas are you -- do you have an opinion about that  
16 relate to this case and expert opinion about?

17 A. Well, I give law enforcement classes on  
18 gangs and the subculture of gangs.

19 Q. Are you going to give an opinion about the  
20 guilt of anybody in this courtroom?

21 A. No.

22 Q. Are you going to give an opinion about  
23 whether any of these individuals participated in any  
24 of the crimes or any aspect of the crimes?

25 A. Am I going to give an opinion if they've

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1 participated in crimes?

2 Q. Yes. The crimes that they're charged with.

3 A. Not that I'm aware of.

4 Q. Are you going to be giving an expert  
5 opinion that these individuals are all members of the  
6 SNM?

7 A. If you're asking my opinion if they're all  
8 members of the SNM?

9 Q. I'm not asking if you're going to be  
10 offering an expert opinion. Are you going to be  
11 offering an expert opinion about their membership?

12 A. If I'm asked if an individual is a member  
13 of the SNM, yes, I'll give that opinion.

14 Q. And that will be sometimes based on  
15 personal interviews, right?

16 A. We have --

17 Q. Will it sometimes be based upon a personal  
18 interview of the individual?

19 A. It will be based on documentation, if they  
20 say they're validated or not or if they're a member  
21 of that group.

22 Q. So documents that someone else may have put  
23 in their file?

24 A. Documents that I have access to, like, for  
25 example, the Criminal Management Information System,

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1 which would indicate whether they're a gang member or  
2 not.

3 Q. And who would put the information into that  
4 system?

5 A. Whoever is interviewing them.

6 Q. Would it be someone that was conducting an  
7 investigatory interview of that individual?

8 A. I've entered individuals into the system  
9 that have admitted to me that they're gang members,  
10 yes, and then started.

11 Q. If we're looking at a printout of that  
12 system, are we going to whatever the screen shot? I  
13 take it it's a computerized program?

14 A. Are you going to look at it?

15 Q. Let's back up. Is that a computerized  
16 program you're talking about?

17 A. Yes.

18 Q. And can you look at it on the screen and  
19 determine if someone is a gang member?

20 A. Yes, it's part of my job, yes.

21 Q. And when you look at that screen, there is  
22 data that populates the screen; is that correct?

23 A. Correct.

24 Q. And when you look at that data, does it  
25 indicate who input it?

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1 A. Yes.

2 Q. So each item that's inputted has the  
3 individual who put it in?

4 A. Correct.

5 Q. Now, did you review any particular  
6 materials -- as opposed to your life experiences --  
7 any particular materials to prepare to be an expert  
8 in this case?

9 A. Just my experience within the gang unit and  
10 all the training that I've had.

11 Q. So you weren't shown, for example, STIU  
12 packets on the defendants that are here today?

13 A. No.

14 Q. Specifically with regard to Mr. Garcia,  
15 Billy Garcia?

16 A. No.

17 Q. Have you personally observed him involved  
18 in gang activities?

19 A. No.

20 Q. Have you personally overheard him say he  
21 was a member of the SNM Gang?

22 A. No.

23 Q. Were you in Southern New Mexico  
24 Correctional Facility in 2001?

25 A. No, I was not.

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1 Q. How about the Penitentiary of New Mexico?

2 A. No.

3 Q. How about in 2000, for those facilities?

4 A. No.

5 Q. Now, I notice on your resume that you  
6 indicated that you are currently, and have been since  
7 2015, a member of an FBI Task Force; is that correct?

8 A. That's correct.

9 Q. And what task force is that?

10 A. The task force was an investigation into  
11 the California Surenos.

12 Q. Tell me about this FBI Task Force, if you  
13 could. Are they just FBI people or a group of  
14 agencies that are represented?

15 A. I believe there are different agencies. In  
16 particular, we were working with the FBI, the  
17 Corrections Department. The STIU was working with  
18 FBI on the California Surenos at the time.

19 Q. In the time that you've been working for  
20 New Mexico Department of Corrections, has there been  
21 an ongoing relationship between New Mexico  
22 Corrections and the FBI?

23 A. I'm sure there has.

24 Q. I think you said earlier that, in 1998, is  
25 when the Security Threat Intelligence Unit was

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1 formed; is that right?

2 A. Yes. It was a pilot program at the time.

3 Q. And when did it go from being a pilot  
4 program to -- I guess -- what did it become after it  
5 was a pilot program?

6 A. An official unit.

7 Q. When did it become an official unit?

8 A. I believe that was in 1999 to 2000.

9 Q. Now, you had indicated on your resume that  
10 you obtained a certification in the Surenos; is that  
11 right?

12 A. Yes. What I did was a two-year  
13 investigation into -- the California Surenos at the  
14 time were a disruptive prison group. And at the time  
15 we had enough evidence to certify them as a Security  
16 Threat Group. So it took about two years into that  
17 investigation.

18 Q. So were the Surenos certified, or did you  
19 obtain a certification, or both?

20 A. Once we conduct our investigation, all the  
21 paperwork is turned in to the STIU administrator, all  
22 the way up to the Director of Prisons, to the  
23 Secretary of Corrections. And if they agree that we  
24 have all the evidence necessary to certify them, then  
25 the Secretary of Corrections signs off on the

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1 certification.

2 Q. So when you put down two years  
3 certification of the Surenos, you mean --

4 A. It's an investigation.

5 Q. It's hard for them to take down when we're  
6 both talking. The certification of the Surenos, not  
7 your certification; is that right?

8 A. Yes. It was a certification into the gang,  
9 the prison gang, California Surenos.

10 Q. Is there any process by which a gang -- a  
11 person who wants to be a gang expert can get  
12 certified or, you know, get a degree or something  
13 like that?

14 A. I believe that you have to be able to give  
15 gang presentations to law enforcement entities, which  
16 I've done. I have also given them to the FBI. I  
17 also give them to Homeland Security. Also to law  
18 enforcement academies. Also to our own academy. So  
19 under that criteria, I think.

20 Q. But would I be correct in saying that there  
21 is no degree that you have to obtain to become a gang  
22 expert; is that --

23 A. Well, if there is, nobody has given me one  
24 yet.

25 Q. Is there a certification process by which

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1       an entity or a body of your peers certify or accept  
2       you as a gang expert or something of that nature?

3           A.     Well, I've given gang presentations,  
4       probably about eight or nine presentations. During  
5       this time, I've never had anybody rebut or say that  
6       any of the things that I'm saying is incorrect.

7           Q.     How many times have you testified?

8           A.     Twice.

9           Q.     And twice prior to today?

10          A.     I testified one other time in the Sureno  
11       case. And I've testified on an SNM case once.

12          Q.     And those cases, I take it those are  
13       criminal cases?

14          A.     The Sureno case was a case that was filed  
15       in Federal Court. I believe it was in the RLUIPA.  
16       And the --

17           MR. DAVIS: I'm sorry, Judge. I didn't  
18       hear that answer.

19          A.     I believe it was a religious right, where  
20       they filed a habeas on a religious right.

21          Q.     Was that here in New Mexico?

22          A.     Yes.

23          Q.     It was a civil suit; is that --

24          A.     I believe, yes. It might have been a civil  
25       suit.

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1 Q. And then what was the other case?

2 A. The other case was an SNM member that had  
3 filed a habeas to return back to the SNM unit, which  
4 he claimed he was in good standing. But we have  
5 evidence to oppose that.

6 Q. And was that individual representing  
7 himself?

8 A. No, he had counsel.

9 Q. During those two proceedings no one from  
10 either of those cases contested your qualifications  
11 as an expert?

12 A. No.

13 Q. I guess what I'm trying to get at, is there  
14 an organization like, I don't know, the American  
15 Association of Gang Experts, or something like that,  
16 that will look through someone's qualifications and  
17 say: You have reached the level that you are now an  
18 expert? And the reason I'm asking you that, kind of  
19 like a doctor gets a Ph.D., is there something that  
20 you have to do to become a prison gang expert?

21 A. I'm a member of the New Mexico Gang Task  
22 Force.

23 Q. So are all people that are members of that  
24 gang experts?

25 A. I don't know.

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1           Q.     What are the requirements to become a  
2 member of that group?   Can I be one?   Can I go in  
3 there?

4           A.     I don't know.

5           Q.     So you don't know what the requirements are  
6 to join that?

7           A.     I don't.   Give gang presentations, I guess.

8           Q.     Is there any database of gang information  
9 that we could access, that we'd be allowed to access,  
10 defense lawyers, where we could verify the accuracy  
11 of the information that you're giving an expert  
12 opinion about?

13          A.     I don't know.

14          Q.     Well, for example, let's take a look at --  
15 let's take the tattoos.   Is there a book of tattoos  
16 or something like that, or a document that lists:  
17 Here are all the tattoos, that is what they mean,  
18 this is what gang they're members of they represent?

19          A.     Yeah.   I'm sure if you go into the search  
20 engine on your computer you could find all that stuff  
21 out.   On the internet, for example, different prisons  
22 will put or different law enforcement entities will  
23 put prison gangs, their tattoos, their symbolism,  
24 what they represent, who their enemies are, and  
25 different things like that.   So, yeah, sure you

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1 could.

2 Q. Are these peer-reviewed materials?

3 A. Peer-reviewed?

4 Q. Peer-reviewed.

5 A. They're open to the general public. You  
6 can look them up on the internet.

7 Q. So, to your knowledge, the only review is  
8 how many, perhaps, times it's been visited on the  
9 internet?

10 A. Well, the credibility would be who put them  
11 on there.

12 Q. You talked today a little bit about your  
13 interviews of a lot of different gang members that  
14 are inmates at the New Mexico Corrections; is that  
15 right?

16 A. Correct.

17 Q. When you do that interview, those  
18 interviews, did you identify yourself as a  
19 corrections official?

20 A. I have a shirt on that would say "STIU."  
21 It's pretty widely known that I'm an STIU officer.

22 Q. When inmates are given orientation, are  
23 they told what an STIU officer is?

24 A. I introduce myself.

25 Q. Okay. And so do the inmates basically know

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1       that you guys are all law enforcement officers, all  
2       the STIU people?

3           A.     They know we're part of the gang unit, yes.

4           Q.     And that you have the ability, as a member  
5       of the gang unit, to change their classification, if  
6       it's deemed necessary?

7           A.     We can't change their classification.

8           Q.     Or provide input that might change their  
9       classification?

10          A.     Some are; maybe some aren't, depending on  
11       what the conversation is about, depending on what the  
12       interview is.

13          Q.     Well, let me put it in more common terms.

14          Did inmates consider STIU officers the cops?

15          A.     They consider us the gang unit.

16          Q.     Okay. Are you considered law enforcement?

17          A.     I don't know. I suppose.

18          Q.     Now, you've talked to how many SNM members  
19       over the years -- different, not the same ones -- but  
20       how many different SNM members over the years?

21          A.     I couldn't really put a number on that.

22          But it's been plenty, plenty.

23          Q.     Over 100?

24          A.     Yes.

25          Q.     So would you go out on a limb to say a

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1 motto of "no snitching" doesn't really work with the  
2 SNM?

3 A. If you were to put a snitch in the pod with  
4 the regular SNM members, I think that motto would  
5 work.

6 Q. Well, it sounds like a lot of SNM members  
7 talk to you about the SNM, their activities, and what  
8 other SNM members do. Is that fair to say?

9 A. In confidence, yes.

10 Q. So is snitching only considered telling on  
11 somebody in front of them, or is it also considered  
12 when you're telling on someone in confidence?

13 A. Correct.

14 Q. Both ways, right?

15 A. I would imagine it's both ways. But the  
16 way it works in prison is, if an individual is found  
17 out to have given information about the gang, he's  
18 considered a snitch.

19 Q. When these individuals would talk to you,  
20 the members of the SNM, and they'd talk to you, would  
21 you tell them that you'd keep it in confidence?

22 A. Of course.

23 Q. Would you tell them why you wanted this  
24 information?

25 A. It's up to them. If they want to tell me

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1       in confidence, and they'll be forthright about  
2       whether they want to tell me something in confidence  
3       or not.

4           Q.     How do you start these interviews, just  
5       generically?

6           A.     Depending on what the conversation is  
7       about.   If it's about a fight, we'll discuss the  
8       fight.   We'll discuss the individuals that got in a  
9       fight.   We'll discuss how -- what the mood of the pod  
10      is.   We'll discuss if there are other individuals  
11      that are in harm, or why the fight occurred.   It all  
12      depends.   There is a lot of variables to what the  
13      interview would be about.

14           Q.     Would some of these individuals be  
15      interviewed particularly by you, because they'd  
16      asked, for example, to be removed from general  
17      population?

18           A.     If someone has requested to speak with me  
19      on the topic of being removed for their own  
20      protection, yeah, it would be in confidence, of  
21      course, also.

22           Q.     Would sometimes these SNM Gang members come  
23      to tell you things to perhaps get a rival in trouble?

24           A.     That's not really how they work.

25           Q.     They never tell on each other to get each

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1 other in trouble?

2 A. There is a different type of honor system  
3 that works within the prison gangs. And so I'm not  
4 saying it wouldn't happen. But I don't see that as  
5 something that would be something that they would  
6 normally do to try to get a rival in trouble.

7 Q. Well, when these confidential sources have  
8 come in and talked to you, do they always share with  
9 you their purpose in coming to talk to you?

10 A. Well, yes.

11 Q. And you always believe everything they say?

12 A. Well, I'd be an idiot if I did that.

13 Q. So would it be fair to say it's very  
14 difficult to determine what the reasoning or the  
15 purpose is when one SNM member informs on another?

16 A. If I get what you're asking me correctly,  
17 is if somebody comes in confidence and says something  
18 about another individual, am I going to corroborate  
19 that information, to make sure that what he's saying  
20 is the truth, or to ascertain what his motive is for  
21 telling me that information, of course, I'm not going  
22 to put anybody's life in jeopardy because somebody is  
23 telling me something that may not be true.

24 MR. CASTLE: Is there a way to connect my  
25 laptop? Judge, I apologize, but the printer was not

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1 working downstairs.

2 THE COURT: Mr. Martin is asking to use the  
3 restroom. Let's take a little bit early break. Does  
4 that work for you?

5 MR. CASTLE: That works for me, Your Honor.

6 THE COURT: All right. So we'll be in  
7 recess for about 15 minutes.

8 MR. CASTLE: All right.

9 (The Court stood in recess.)

10 THE COURT: All right. We'll go back on  
11 the record. Mr. Martin, I remind you you're still  
12 under oath.

13 THE WITNESS: Yes, sir.

14 THE COURT: Mr. Castle, if you wish to  
15 continue your cross-examination of Mr. Martin, you  
16 may do so at this time.

17 MR. CASTLE: Thank you.

18 Q. Exhibit 18, I think you've indicated is an  
19 STIU packet for Mr. Baca; is that right?

20 A. That's correct.

21 Q. And there would be a similar kind of packet  
22 for everyone that's a defendant in this case?

23 A. Everyone that's gang affiliated, yes.

24 Q. I'm looking at page 1. Are you able to  
25 tell from that document who entered the data on page

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1 1?

2 A. No.

3 Q. I want to turn to page -- the third page of  
4 that exhibit, which doesn't have a number on it --  
5 but is this a checklist of criteria that is used by  
6 the Department of Corrections to determine whether  
7 someone is a gang member?

8 A. Yes.

9 Q. When was that set of criteria developed?

10 A. I really don't know.

11 Q. When is that sheet -- when was that put  
12 into Mr. Baca's file?

13 A. I believe when he returned back from the  
14 Nevada Department of Corrections.

15 Q. So would this date here, May 13, 2011, be  
16 the date that it was produced?

17 A. I believe that's probably when someone  
18 reviewed it.

19 Q. And it contains certain areas that have  
20 been checked off; is that right?

21 A. Correct.

22 Q. When I look at this document, there is --  
23 there are certain areas. User: What does "user"  
24 mean?

25 A. That would indicate that the user is the

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1 one that put the information in.

2 Q. And is this an ongoing database that  
3 continues to be updated through time?

4 A. Yeah. Let me just clarify. When Anthony  
5 Ray Baca left to Nevada, this document wasn't in use  
6 at the time. So when he came back, that's when --  
7 that's why it was entered like this in 2008.

8 Q. Now, I want to show you a packet which we  
9 received in the discovery, and was represented as  
10 Mr. Billy Garcia's STIU packet. Okay?

11 A. Okay.

12 Q. Sorry I couldn't print it out, the printer.

13 Okay. I believe the Government will  
14 stipulate to this as the packet that was provided to  
15 us in discovery.

16 MS. ARMIJO: Well, I don't know how far  
17 into it that is, but I do know this particular screen  
18 shot was provided.

19 MS. DUNCAN: I'm sorry to interrupt Mr.  
20 Castle. Can you give us the Bates number?

21 MR. CASTLE: Yes. It begins on page 9557,  
22 and continues to 9744.

23 MS. DUNCAN: Thank you.

24 Q. I'm going to turn to page 3. What is this  
25 document right here? Tell me if you need me to

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1 scroll up or down.

2 A. I believe that's an STIU audit form.

3 Q. And who puts this information in?

4 A. Whoever audited the file.

5 Q. Are you able to tell that by looking at the  
6 document? Would that be Adam Vigil, the auditor?

7 A. Correct.

8 Q. What's an auditor?

9 A. He would be the individual that went  
10 through his file to find that everything is still  
11 current, all the information is current, or he hasn't  
12 denounced or -- it's to find out if he's still a  
13 validated member.

14 Q. So they go through the file, read it, and  
15 audit what's in the file?

16 A. Yes.

17 Q. So the next page, page 4, now, is this the  
18 same kind of document that we saw in Exhibit 18, page  
19 3? In other words, is it a set of criteria as  
20 applied to Mr. Garcia?

21 A. Yes.

22 Q. And so if we look here, there is a box for  
23 self-admission. Do you see that?

24 A. Yes, I see that.

25 Q. Is that checked off?

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1 A. No.

2 Q. What does that mean?

3 A. That he didn't self-admit.

4 Q. Okay. There is tattoos. Do you see that?

5 A. Yes.

6 Q. Is that checked off?

7 A. No.

8 Q. What does that mean?

9 A. That means that they didn't see any tattoos  
10 that were affiliated with the SNM Gang, or any gang.

11 Q. So I won't go through all of them, but I'll  
12 go through the ones that are checked. Number 6 is  
13 authorship. Do you see that?

14 A. Yes.

15 Q. When was the last time that -- well, is  
16 there a comment about authorship?

17 A. The comment would say that there was a  
18 letter that was found in his property, most likely  
19 that he authored.

20 Q. On February 19 of 1999; is that right?

21 A. If that's when he wrote it, yes.

22 Q. So okay. And then the next one is group  
23 photos. It appears there is a group photo in 1998;  
24 is that right?

25 A. Correct.

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1           Q.     And then the next one that's checked is  
2 contacts.  What's contacts?

3           A.     The individuals that he contacts or  
4 associates with.

5           Q.     If they're seen together out in the yard?

6           A.     Or maybe he's written letters to them.

7           Q.     Okay.  And again, that's from July of 2001;  
8 is that right?

9           A.     Yeah.  This one indicates that he received  
10 or was the author or he received the letter from --

11          Q.     I apologize.  That wouldn't be 2001; it's  
12 actually from April 4 of 1999.

13          A.     Correct.

14          Q.     And then the next one is CI information  
15 from January 14 of 2000?

16          A.     Correct.

17          Q.     What is CI information?

18          A.     Confidential information received.

19          Q.     From another inmate?

20          A.     Or from -- yeah, it could be an inmate, or  
21 from -- yeah, most likely, it would be another  
22 inmate.

23          Q.     You don't need to keep the identities of  
24 investigators anonymous, do you?

25          A.     Correct.  That's what I was saying.

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1 Q. And then other agencies, there is another  
2 indication from 1998?

3 A. Correct.

4 Q. So is there anything from 2001 that is on  
5 that checklist?

6 A. From 2000 what?

7 Q. 2001.

8 A. It looks like they were all entered in  
9 2001.

10 Q. They're entered, but I'm talking about the  
11 date of any information concerning gang. Was there  
12 anything under the column comment, do you see 2001?

13 A. You're saying that -- there was letters  
14 found in there. They entered letters that were  
15 written in 1999, and in turn in 2001; is that what  
16 you're saying?

17 Q. Is that all the information that's on here  
18 is from 1998, 1999, and 2000, on Mr. Garcia?

19 A. That appears so.

20 Q. And anything since 2000, the last 17 years?

21 A. I don't know how long he was out before he  
22 returned back into prison.

23 Q. But is there any information in the last 17  
24 years?

25 A. On what you're showing me, no.

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1           Q.     Okay.  Are inmates informed that they  
2     they're identified as a particular member of a  
3     Security Threat Group?

4           A.     Yes.

5           Q.     And are they given an opportunity -- how  
6     are they notified of that?

7           A.     With a questionnaire.

8           Q.     Well, let me show you -- once again, it's  
9     page 9, which would be discovery page 9605.  Is this  
10    a notification to Mr. Garcia?

11          A.     It appears it is.

12          Q.     And do you see that it indicates that he  
13    was classified as a STG member, January 20, 2003?

14          A.     Correct.

15          Q.     But he's not provided the copy of it until  
16    January 15 of 2008, five years later?

17          A.     At the time that this interview was done,  
18    he was able to view the document.  And if he didn't  
19    ask for a copy, then I'm sure one wasn't provided.

20          Q.     Okay.  So on January 15 of 2008, he was  
21    provided with a copy and asked to sign it, and he  
22    refused to sign it?

23          A.     That was probably at the time that he  
24    returned back to prison.

25          Q.     Okay.  So the answer is yes?

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1           A. Yes.

2           Q. Now, is the purpose in informing or  
3 notifying an individual that the Department of  
4 Corrections considers them an STG member, is that  
5 purpose to give them an opportunity to request a  
6 hearing or any kind of due process to contest that  
7 label?

8           A. I believe that they can write to the STIU  
9 administrator and request a hearing to review it.

10          Q. Let's look back at the notice again. Does  
11 the notice inform them that they have any ability to  
12 contest that determination, other than to check a box  
13 saying: I'm currently an active member or an  
14 inactive member?

15          A. Yes.

16          Q. Yes, there is?

17          A. Are you asking if there is a box that  
18 indicates whether they're active or inactive?

19          Q. Yes.

20          A. There is a box saying that they're active  
21 or inactive.

22          Q. Is there any indication anywhere where you  
23 can contest your designation in any other form other  
24 than checking a box?

25          A. During the interview, he has the right to

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1 contest it. And it would be written.

2 Q. Now, when you talked about some of the ways  
3 that an individual is classified is by the letters;  
4 is that correct? You look at a letter, and determine  
5 that it's between two SNM Gang members, and somehow  
6 that gets into their different packets, saying that  
7 they've having gang communications?

8 A. If there is gang business communication.

9 Q. How are you able to determine who authored  
10 the letters?

11 A. They write their name on it.

12 Q. Sometimes they say: This is from Billy  
13 Garcia, right, for example?

14 A. Well, yeah, and his inmate number, and  
15 where he's housed.

16 Q. Okay. I want to show you another document  
17 from Mr. Garcia's file, which is page 9641. And I  
18 want you to review this for a second. If you've  
19 gotten halfway, that's enough.

20 So this document basically indicates that  
21 some member of the staff of one of the facilities  
22 opened a letter addressed from what appeared to be  
23 Anthony Padilla, to Toni Padilla. But this staff  
24 member renders an opinion that the handwriting of the  
25 contents of it was for a Gerald Archuleta; is that

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1 right?

2 A. That's what it states.

3 Q. So does the Department of Corrections have  
4 handwriting experts available to them in the building  
5 to be able to analyze handwriting?

6 A. Not that I'm aware of.

7 Q. In regards to gang symbols, is there any  
8 specific methodology that you're aware of that the  
9 Department of Corrections uses to interpret symbols  
10 associated with a gang?

11 A. Such as SNM?

12 Q. Yeah. Is there any methodology that's  
13 applied to that?

14 Let me back up. Let me give it to you a  
15 little bit differently. Has the Department of  
16 Corrections assessed everyone for a period of time at  
17 the prisons who had that Zia symbol, or whatever the  
18 name of it was, the symbol, and verified that every  
19 one of the people that have that are an SNM Gang  
20 member? And that -- okay I'll stop there. Have they  
21 done that?

22 A. Not if I'm hearing you correctly, not  
23 everyone that has a Zia symbol is an SNM Gang member.

24 Q. What percentage do?

25 A. At this point, I couldn't answer that.

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1           Q. So not everyone that has a Zia symbol is an  
2 SNM Gang member, right?

3           A. Correct.

4           Q. And not everyone who is an SNM member has a  
5 Zia symbol?

6           A. Correct. They usually, when they put a Zia  
7 symbol, they'll put a letter in it which would  
8 indicate -- that's what makes the difference.

9           Q. When you say "usually," how often is that?  
10 Is that 9 out of 10; 7 out of 10? Can you quantify?

11          A. I don't remember ever seeing an SNM Gang  
12 member with a Zia symbol that didn't have "SNM" or  
13 the letter "S" in it.

14          Q. So that's based on your personal  
15 observation?

16          A. Yes.

17          Q. Are you aware of any data that the  
18 Department of Corrections keeps on this particular  
19 area that you're testifying about?

20          A. I'm not, unless administration does.

21          Q. Are you aware of instances in which someone  
22 has been identified by the Security Threat  
23 Intelligence Unit as a gang member and they weren't a  
24 gang member? Do you guys ever make mistakes?

25          A. Yes.

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1 Q. What's the percentage of that, the error  
2 rate?

3 A. It's pretty low.

4 Q. Ballpark, 10 percent, 5 percent, 9? Do you  
5 know?

6 A. I couldn't say, because if I'm working at  
7 the Penitentiary of New Mexico, and I noticed a  
8 mistake, then I would have to say 1 in 700. But I  
9 can't say for across the state, because I don't keep  
10 those stats.

11 Q. So does the State keep those stats?

12 A. I don't know.

13 Q. So you're just saying you've made that  
14 mistake maybe 1 out of 700 times?

15 A. No.

16 Q. Okay. How often? Well, are you aware of  
17 anyone's error rate other than your error rate?

18 A. I don't have an error rate. I'm sorry, I  
19 was giving you an analogy.

20 Q. Okay. How often -- we'll move on.

21 The SNM, in general, does it have different  
22 factions?

23 A. What do you mean by "different factions"?

24 Q. Well, different groups within the SNM.

25 A. Do they have different leaders within the

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1 SNM?

2 Q. Yes.

3 A. Yes.

4 Q. And do all those leaders work together, or  
5 do they, at times, act at odds with each other?

6 A. I'm sure they act at odds against each  
7 other at times. But overall, as a whole, they act  
8 together.

9 Q. Okay. Well, what are -- are there dtheir  
10 subgroups for the SNM?

11 A. Subgroups?

12 Q. Yes.

13 A. Not that I'm aware of.

14 Q. Have you ever heard of the All Stars?

15 A. Yes.

16 Q. And what are they?

17 A. They're a group that doesn't exist.

18 Q. Okay. No long exist or never existed ever?

19 A. I believe they tried to exist, but it was  
20 short-lived. It was really never established.

21 Q. So there was never a group of SNM members  
22 that held themselves out as the All Stars?

23 A. I believe that was an attempt that didn't  
24 go anywhere.

25 Q. And what was the attempt to do? What were

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1       they attempting to do?

2           A.    They were attempting to recreate the SNM.

3           Q.    Were they trying to recreate it under a  
4                  different leader than the existing leader?

5           A.    Correct.

6           Q.    And who would have been the head of that  
7                  group?

8           A.    I'm not sure.

9           Q.    Okay. Are you familiar with an individual  
10                 by the name of Gerald Archuleta?

11           A.    Yes.

12           Q.    Was he the head of that, I guess, splinter  
13                 group that tried to be formed, called the All Stars?

14           A.    No.

15           Q.    Who was, if you recall?

16           A.    My best recollection would probably be an  
17                 individual by the name of JR Torrez.

18           Q.    JR Torrez? I'm sorry?

19           A.    Junior Torrez.

20           Q.    And when did that happen? When did this  
21                 splinter group attempt to form?

22           A.    I believe this was probably in the '90s,  
23                 the late '90s.

24           Q.    Are you familiar with the term Old Timers?

25           A.    Yes.

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1 Q. And what does that term mean?

2 A. That means the veteran -- a veteran group,  
3 veteran individuals, if you're talking about inmates.

4 Q. When did they exist?

5 A. I think they all just -- are you making  
6 reference to a name or an organization?

7 Q. Is there a group of SNM members that were  
8 either identified by STIU or by themselves as, quote,  
9 the "Old Timers," end quote?

10 A. No. Within the SNM, the Old Timers are  
11 probably individuals that are probably no longer in  
12 prison, and probably just retired out of the SNM and  
13 probably are no longer active members within the  
14 organization, or don't have that same influence  
15 within the group.

16 Q. Billy Garcia over here to the left, is he  
17 an Old Timer?

18 A. I would consider him an Old Timer, yes.

19 Q. And are you aware, is he still a member of  
20 the SNM? Do you have any personal knowledge of that?

21 A. I believe he's still a member of the SNM.

22 Q. What do you base that on?

23 A. Individuals that I have interviewed.

24 Q. Have you ever interviewed an individual by  
25 the name of Jerry Montoya?

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1           A. I've spoken to Jerry. I don't think I've  
2 ever interviewed him.

3           Q. When you spoke to him, what did you speak  
4 to him about?

5           A. Just in generalization, to see how he was  
6 doing, if he was okay; if -- how his family was,  
7 different things like that. But it wasn't an  
8 interview.

9           Q. You were talking about how members could  
10 leave the SNM. They could exit it because of their  
11 religion?

12          A. Right.

13          Q. And that's by becoming a Christian. Do you  
14 recall that?

15          A. Yes, sir.

16          Q. I want to show you a document. Let's see  
17 if this assists you in any fashion.

18           Do you recall the Department of Corrections  
19 obtained information that Mr. Garcia had walked away  
20 from the SNM to pursue Christianity? When you go to  
21 the first page.

22          A. I wasn't aware of Mr. Garcia. But I was  
23 aware of Ernest Guerrero.

24          Q. And, in fact, the founder of the SNM, Juan  
25 Baca did; is that right?

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1           A. After he got out of prison, yes.

2           Q. So is it your testimony today that the SNM  
3 is one organization without any subgroups within the  
4 organization?

5           A. Yes.

6           Q. And it's your testimony that the various  
7 leaders are all -- they all work together  
8 cooperatively?

9           A. I don't know to what extent they cooperate,  
10 but overall, yes, they work together.

11          Q. You indicated that you talked to Mr. Garcia  
12 when he was in administrative segregation in 2013.  
13 That was your memory?

14          A. That might be true. I think so.

15          Q. Give or take a year?

16          A. Yes, give or take a year. Before he left  
17 prison.

18          Q. What was he in administrative segregation  
19 for?

20          A. I believe we had gotten confidential  
21 information that his life would be in danger if he  
22 was in congregate movement with the other members of  
23 the SNM that were active.

24          Q. Do you recall that it was that Gerald  
25 Archuleta had put out a green light to murder

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1 Mr. Garcia?

2 A. I knew that there was a disagreement  
3 between Mr. Garcia and Mr. Archuleta while they were  
4 in the county jail, yes.

5 Q. So when you say that the group works  
6 together, they don't have subgroups, how do you  
7 explain that a person like Mr. Archuleta, who put out  
8 a hit or a green light on someone else, such as  
9 Mr. Billy Garcia?

10 A. He was in charge of the SNM at the time.

11 Q. So I think you said earlier that the only  
12 way you get out of the SNM is either through death or  
13 becoming a snitch, or becoming a Christian; is that  
14 right?

15 A. That was one of the earlier ways that they  
16 did business, yes.

17 Q. And when did that end?

18 A. It seemed to change a lot more in the early  
19 2000s.

20 Q. Okay. So did the gang itself kind of  
21 change? How did it change? How did the gang change?

22 A. Probably a new generation of individuals  
23 that were coming into the gang.

24 I believe the gang started getting more  
25 hooked on drugs, heroin, and started doing a lot more

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1       heroin. There was a lot more individuals that were  
2       influential that were giving individuals passes.

3           Q. "Passes" being --

4           A. "Passes" being that they shouldn't be  
5       touched -- or let's say, for example, if a guy was  
6       not in good standing, but he was bringing in a lot of  
7       drugs, they would give him a pass because he was  
8       bringing in a lot of drugs and money for the  
9       organization.

10          Q. Would this have been around 2002, 2003, in  
11       that time period?

12          A. That's probably the beginning of the  
13       decline on that.

14          Q. So the leadership of the SNM -- I think  
15       you've said a few things, and I just want to break it  
16       down.

17          A. Sure.

18          Q. The leadership kind of changed to younger  
19       guys -- is that right -- around that time?

20          A. I think the younger soldiers, and  
21       individuals that were leading the SNM at the time  
22       probably had a different philosophy.

23          Q. So then the "different philosophy" meaning  
24       that they ran things differently than the older  
25       group; is that right?

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1           A.     Correct.

2           Q.     And they had different, perhaps, goals such  
3               as distribution of drugs?

4           A.     Correct.

5           Q.     So they had different methods, different  
6               goals, and different leaders?   Would that be fair to  
7               say?

8           A.     Yes.   It changed, simply because they were  
9               now in segregated congregated movement, other than in  
10              population setting with other individual inmates.

11          Q.     I want to talk to you a little bit about  
12             this photograph.   You were talking about separated --  
13             I think you just said segregation; is that right?

14          A.     Segregated population.

15          Q.     So when did that start?

16          A.     I believe after the murders in 2001.

17          Q.     Okay.   So in 2001, before the murders, they  
18             did not -- did they have a prison that housed SNM  
19             members?

20          A.     I believe all the prisons housed SNM  
21             members.

22          Q.     How about Southern New Mexico Correctional  
23             Facility?

24          A.     Yes.

25          Q.     Was that the predominant location of

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1 members who were not in PNM?

2 A. I'm not sure what you're saying.

3 Q. Did they house a majority of SNM members  
4 who were not in PNM at Southern New Mexico  
5 Correctional Facility?

6 A. There was a large amount of SNM members at  
7 Southern, yes.

8 Q. I want to talk to you a little bit about  
9 phone calls. You've listened in on phone calls  
10 various gang members have made; is that right?

11 A. Correct.

12 Q. And you've heard them use terms -- I think  
13 you used some like "Michael Jackson"?

14 A. Correct.

15 Q. How do you determine "Michael Jackson,"  
16 that that phrase means heroin?

17 A. I didn't determine that right out. I  
18 didn't say, Well, you know, this means Michael  
19 Jackson. It's a breakdown of interviews with inmates  
20 and confidential informants that will eventually tell  
21 you that that's what they mean. So that's how we get  
22 the meaning.

23 Q. So a gang member could tell you that  
24 "Michael Jackson" means heroin?

25 A. And it would make sense within the content

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1 of what we were listening to.

2 Q. So the source of the information would be,  
3 number one, the tape, or what you're hearing?

4 A. Correct.

5 Q. And then you'd also use a source which was  
6 an inmate or inmates?

7 A. Correct.

8 Q. And they would tell you what that term  
9 meant. And then you go back and listen to it, and  
10 then it would make sense to you?

11 A. Yes.

12 Q. So when that happens, what expertise do you  
13 have to apply to do that, other than the ability to  
14 listen?

15 A. Well, when we find that individual with  
16 heroin, it would usually indicate that that was  
17 corroborated truth.

18 Q. Okay. So if that happens and you find them  
19 with heroin --

20 A. So that source becomes credible.

21 Q. Okay. So that would be personal  
22 observations, that you observed someone with heroin,  
23 right?

24 A. Well, we're conducting the investigation.  
25 If what the source has told us becomes credible,

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1 then, yes.

2 Q. Well, let me just ask a different way.

3 Assume for the moment I have no expertise. I mean  
4 someone on the street that's not an expert and had  
5 any training in prison gangs, right? Would they be  
6 able, if they were given the phone call and listened  
7 to it, and got the interview of the gang member  
8 saying "Michael Jackson" means heroin, would they be  
9 able to go back and listen to that phone call and  
10 make sense of it?

11 MS. ARMIJO: Objection; calls for  
12 speculation.

13 THE COURT: Well, I think he gets to  
14 explore what the basis of these opinions are. So I'm  
15 going to allow it.

16 A. I'm basing my opinion on my experience in  
17 training within the gang unit. I cannot say whether  
18 a normal person would come to that conclusion, that's  
19 never had any training in gangs.

20 Q. And so under that situation -- let's go  
21 through this for a minute -- if you were to come into  
22 court and testify that on a particular phone call you  
23 heard "Michael Jackson." You interviewed an inmate  
24 that said Michael Jackson was heroin, and that's what  
25 that means, how would I be able to verify whether

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1       that's accurate or not? I'd have to -- would I have  
2       to go talk to the inmate?

3           A. The way that we verified it is that he's  
4       not only telling us that that's Michael Jackson, but  
5       he probably also tells us when they're bringing in  
6       the drugs. And then we would be able to verify that  
7       what he's saying is true.

8           Q. So the verification would be by listening  
9       to the inmate and looking at the drugs?

10          A. Correct. That's a high probability that  
11       that's the truth.

12          Q. Now, you indicated that some of the code  
13       words are used, I guess, transmitted during  
14       visitations that are not monitored; is that right?  
15       Is that what you indicated?

16          A. Contact visits.

17          Q. And then I take it you learned about this  
18       because at some point in time somebody involved in  
19       that unmonitored conversation told you what the code  
20       meant?

21          A. Individuals like, for example, for  
22       different reasons we've gotten them as sources have  
23       indicated to us that that's how they pass  
24       information; that would make logical sense to me  
25       since I've worked in the prison. And if I was an

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1 inmate, that's the way I'd do it.

2 Q. So how do you, then, break the code?

3 A. The code of --

4 Q. Whatever code was developed during these  
5 unmonitored visits. How does the Department of  
6 Corrections break the code?

7 A. That's hard. Sometimes you can't;  
8 sometimes you can.

9 Q. Is there a certification in code breaking  
10 of some sort? I mean, like interpreters have  
11 certifications. Are there --

12 A. No. Because gangs change the meaning of  
13 codes all the time.

14 Q. I understand. But like military has code  
15 breakers, right, that go to code school?

16 A. Right.

17 Q. Do you guys have a code school to break  
18 code of inmates?

19 A. Just the training and experience.

20 Q. You'd indicated earlier that if you knew --  
21 I think what you said is the higher the rank someone  
22 is in a prison gang, what that means is that they've  
23 committed more horrible crimes, I think is what you  
24 said, or horrible acts?

25 A. No. The stature of which you would be in a

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1 gang would be predicated on the amount of -- how many  
2 crimes you've committed or horrible acts you've  
3 committed. That will give you stature. That  
4 wouldn't give you influence to be the leader or  
5 anything like that. It could.

6 But let's say, for example -- that's why  
7 it's a subculture, like in the military, if somebody  
8 conducted an act of bravery, maybe he'd be given an  
9 award for act of bravery. In the gang life, if he's  
10 done something for the betterment of the gang, he's  
11 seen in a higher stature as a good guy, if you will,  
12 within that gang, a solid individual.

13 Q. But he wouldn't necessarily get a higher  
14 rank?

15 A. He could.

16 Q. He could, but not necessarily?

17 A. Correct.

18 Q. So if I tell you there is a leader of the  
19 SNM today, and I just said, "John Doe is a leader of  
20 the SNM" --

21 A. Right.

22 Q. -- top leaders, what does that tell you  
23 about that person? Does it tell you anything?  
24 Whether they committed any crimes other than the one  
25 that got them in prison? What does that tell you

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1 about that person?

2 A. That would tell me that the rest of the  
3 individuals in that group believe in him and they  
4 find him credible.

5 Q. So it wouldn't tell you necessarily that's  
6 a person who is going to order hits and murders  
7 around the prison, would it?

8 A. Well, in the gang life, you're probably an  
9 individual that would order hits.

10 Q. Probably means what: 100 percent? Over 51  
11 percent? What would be?

12 A. I would say 100 percent.

13 Q. So you're saying, if you're a leader in the  
14 SNM, you've ordered murders?

15 A. I wouldn't say murders, no.

16 Q. Then what are you saying that they did?

17 A. They could order assaults.

18 Q. Could they maybe be a good source of drugs?

19 A. Yes.

20 Q. Be someone that is honored and respected  
21 because of their honesty and their physical stature?

22 A. Honesty within the gang?

23 Q. Yes.

24 A. Or you mean the operating loyalty -- what  
25 you call loyal, and maybe what they defer -- they

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1        might think of loyalty different than what you think  
2        of loyalty. But an individual that is a high ranking  
3        member within an organization that's a criminal  
4        organization, my professional opinion is that he's  
5        conducted some kind of heinous crimes in the past, or  
6        has ordered them.

7           Q. And that professional opinion is based on  
8        what?

9           A. Training and experience.

10          Q. So interviews with inmates, and  
11        information?

12          A. Right.

13          Q. And I take with regard to Mr. Garcia you  
14        didn't do any -- you haven't gathered information  
15        about him?

16          A. Mr. Garcia is Billy Garcia?

17          Q. Yes. Thank you for that.

18          A. I really didn't know Billy Garcia too much.  
19        Only by reputation, or what other inmates have told  
20        me about him. I met Billy Garcia when he returned  
21        back to prison. I attempted to interview him. And  
22        he declined, didn't say anything. So that's the last  
23        time I've ever spoken to him.

24          Q. And after that, are you aware of any gang  
25        activity he's been involved in?

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1           A. Monitoring his mail or his phone calls, I  
2 was not aware of any gang activity.

3           Q. Now, you talked about Frederico Munoz?

4           A. Correct.

5           Q. What rank did he end up achieving in the  
6 SNM?

7           A. As far as I know, he was a soldier within  
8 the SNM.

9           Q. And did he commit two murders, at least  
10 that you know of -- all right, I guess the shooting  
11 on the street and a murder in a county facility; is  
12 that right?

13          A. I believe so.

14          Q. And how did you learn about that?

15          A. I believe I debriefed him when he went to  
16 the RPP Program.

17          Q. When would that have been?

18          A. Maybe 2013, 2014.

19          Q. And that would have been a debrief where  
20 you would have written down what he said to you?

21          A. Correct.

22          Q. And he admitted to murders and shootings;  
23 is that right?

24          A. He admitted to -- yeah, I believe that was  
25 probably public record already. But, yes, he

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1 admitted to whatever he had done in the gang, yes.

2 Q. So these are all matters that were already  
3 part of the public record; is that what you said?

4 A. I believe so.

5 Q. So he didn't admit to anything new that  
6 wasn't already known?

7 A. Other than how the SNM structure works or  
8 the SNM organization, yes.

9 Q. Now, the source of this -- Mr. Munoz, is a  
10 good example, I'll use him -- when you get inmates  
11 that are giving you information about the SNM that  
12 used to be members, or are currently members, are  
13 they often given any incentives -- are they ever  
14 given any incentives to assist?

15 A. To assist in giving information?

16 Q. Yes.

17 A. They volunteer the information.

18 Q. They just give it freely, without any  
19 problem?

20 A. Well, if an individual is tired of being  
21 part of the gang and wants out, and we have -- he  
22 would like to go to a restoration program, then part  
23 of the criteria is for him to share or debrief  
24 information about his past and about his involvement  
25 within the group.

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1           Q.     So the Department of Corrections doesn't  
2 say: Cut their sentence, or anything like that?

3           A.     No, sir.

4           Q.     Give him money?

5           A.     The Department of Corrections does not give  
6 money.

7           Q.     That would be wrong to get information from  
8 them; would that be fair to say?

9           A.     I'm saying that the Department of  
10 Corrections does not give money.

11          Q.     How about the ability to give special  
12 credits to inmates; is that right?

13          A.     Credits earned.

14          Q.     How about a special cut in the length of  
15 their sentence, if they cooperate? Do they have that  
16 ability?

17          A.     Not that I'm aware of. I don't know if  
18 it's been done or not. But not that I'm aware of.  
19 STIU has not done anything like that.

20          Q.     Has STIU ever sought the permission to be  
21 able to do things like that?

22          A.     Not that I'm aware of.

23          Q.     Why not? I mean, I'm asking because that  
24 sounds like it would be a really good incentive to  
25 get a lot of information from inmates. Why would the

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1 STIU not request the ability to cut people's  
2 sentences in order to gain information about the  
3 case?

4 A. You're asking for my opinion on it?

5 Q. Yes.

6 A. We don't do it probably because it's  
7 against our policy to do it. The incentive would be,  
8 most likely, that we remove them from the gang, the  
9 gang life, that he no longer wants to be part of, and  
10 put him into a congregate population, where they  
11 don't have to be subjected to the politics of gang  
12 life.

13 Q. Well, if the STIU had the ability to cut  
14 people's sentences or give money to inmates, in your  
15 expert opinion, do you believe that would, all of a  
16 sudden, cause a lot of inmates to want to come and  
17 cooperate?

18 A. I don't know.

19 Q. Do you think it would affect whether they  
20 would be reliable?

21 A. I don't know.

22 Q. Are gang members motivated by getting out  
23 of jail?

24 A. I think, when an individual decides that he  
25 no longer wants to be a part of something, and wants

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1 to change, that's the motivation that they use to ask  
2 for help to get out.

3 Q. So are you saying that you're an expert in  
4 the motivations of inmates in cooperating with STIU?

5 A. I'm saying that during the questioning, I  
6 ask them why they're doing this. And what I get as a  
7 motivation is that they no longer want to be part of  
8 the organization. So they've been thinking about it  
9 for a while. They didn't just wake up in the morning  
10 and say: I don't want to do this.

11 Most likely, in my experience, most of the  
12 individuals have thought about it for a while, and  
13 had weighed their options; maybe talked to their  
14 family members, and then made a decision to exit.

15 Q. So is that an expert opinion or just a  
16 personal opinion?

17 A. That's what I've seen.

18 Q. I'm asking is that your expert opinion or  
19 just an opinion as a layperson?

20 A. No, that's my expert opinion and what I've  
21 seen.

22 Q. Did you go to school, or trainings that  
23 talked about the motivations of inmates that come  
24 forward with information; is that part of the  
25 training?

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1           A. Just time and experience.

2           Q. And in your time and experience do inmates  
3 ever ask to get out of jail in return for  
4 information?

5           A. I don't have the ability to get people out  
6 of jail.

7           Q. No: Do they ask?

8           A. Do they ever ask to get out of jail?

9           Q. Yeah, do they ever ask to --

10          A. If a guy is serving 998 years, I don't  
11 think he's going to ask to get out of jail.

12          Q. So all the gang members are serving that  
13 kind of sentence?

14          A. No. You're asking me a question that I  
15 thought fit that analogy.

16           I'm guessing it didn't make sense to me.

17          Q. Agent, you've indicated that you're an  
18 expert, and you want to give an expert opinion --

19          A. Correct.

20          Q. -- about motivations of inmates when they  
21 come forward and talk to you about gang information,  
22 right?

23          A. Right.

24          Q. So what I'm trying to explore is what is  
25 your experience in this regard.

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1 A. My experience is --

2 Q. I'm trying to set the stage, okay?

3 So in the interviews that you've had with  
4 inmates who are providing information about gang  
5 members, is it your testimony that none of them have  
6 ever asked for any relief from their sentence in  
7 return for their information?

8 A. Not to me.

9 Q. And is it also your testimony that none of  
10 them have ever asked for any kind of favor at all in  
11 return for their information?

12 A. I make it clear that I can't give nobody  
13 any favors, that I can't promise any favors.

14 Q. So is it your testimony that every one of  
15 these informants that come forward with information,  
16 at least from your perspective, are doing it for  
17 noble reasons?

18 A. For the restoration to population, is that  
19 what we're talking about? Or just for information in  
20 general?

21 Q. The information about SNM Gang members.

22 Let's make it specific.

23 A. The majority of the individuals that have  
24 given information are either based on their own  
25 protection or the protection of other individuals

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1 that they care about.

2 Q. Okay. And what are the minority of the  
3 individuals that do that? What are their  
4 motivations?

5 A. They just don't want any violence.

6 Q. So they're all doing it for good and noble  
7 reasons?

8 A. It's different. It varies. There is  
9 different reasons for what they do.

10 But if we're talking about the Restoration  
11 Into Population, usually that requires an individual  
12 to have a lot of thought process and a change of mind  
13 in order to enter that program.

14 Q. Does the Department of Corrections keep  
15 data on the motivations of inmates coming forward?

16 A. They don't.

17 Q. You talked about Julian Romero having a  
18 green light. Do you recall that?

19 A. Yes.

20 Q. What's the source of that information that  
21 you possess?

22 A. One of the sources of information came from  
23 Mr. Munoz.

24 Q. So interviews with inmates?

25 A. Yes.

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1           Q. And so, what part of your expertise did you  
2 apply to determine that Julian Romero has a green  
3 light?

4           A. The conducting of interviews and  
5 individuals, pretty much telling me the same story.

6           Q. Okay. You indicated that the SNM -- I  
7 guess one opinion you were making is the SNM commits  
8 murders through strangulation and stabbings?

9           A. Correct.

10          Q. And is that on the streets and in the  
11 facilities?

12          A. Correct.

13          Q. So, any other methods that you can think  
14 of?

15          A. Well, I'm sure, if they're on the streets,  
16 and they have access to firearms, they'll use  
17 firearms.

18           But inside the prisons, I've seen  
19 strangulations and stabbings.

20          Q. That's the majority of all killings in the  
21 prisons, are either strangulations or stabbings,  
22 right?

23          A. Correct.

24          Q. So you don't have to be a gang member to  
25 strangle somebody or stab someone, right?

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1           A.     Correct.

2           Q.     Now, was there a particular time when the  
3 SNM kind of had strangulation as a signature method?

4           A.     Not that I'm aware of.

5           Q.     Okay. So would they do it in a particular  
6 fashion that if someone were to come across, someone  
7 who had been murdered that way, you'd go, Oh, that's  
8 obviously by the SNM?

9           A.     No.

10          Q.     How about the stabbings? Was it a certain  
11 way that you could tell that that was an SNM  
12 stabbing?

13          A.     It was an SNM member stabbing another one,  
14 yes.

15          Q.     Okay. I'm just talking about the nature of  
16 which the stabbing occurred.

17          A.     Like you said before, there is stabbings in  
18 prisons.

19          Q.     So you don't have any expert opinion that  
20 you're offering concerning the manner of any murder?

21          A.     No.

22          Q.     Or whether that could be associated with  
23 the SNM?

24          A.     Correct.

25          MR. CASTLE: If I could have one moment,

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1 | Judge?

2 THE COURT: Certainly.

3 MR. CASTLE: I have no other questions,  
4 Your Honor.

5                   THE COURT: All right. Thank you, Mr.  
6 Castle. Who would like to go next?

7 MS. JACKS: I'll go, Your Honor.

8 THE COURT: All right. Ms. Jacks.

## EXAMINATION

10 | BY MS. JACKS:

11 Q. Good afternoon, Mr. Martin.

12 A. Good afternoon.

13 Q. So I guess I want to just start back at the  
14 very beginning, about your career path, and some of  
15 the training that put you where you are today.

16 A. Okay.

17 Q. So, first of all, you said that your  
18 training for this position in the STIU started with  
19 being a correctional officer?

20           A.     No, ma'am, I had to apply and interview for  
21     the position.

22 Q. Okay. But before you did that, you were a  
23 correctional officer, right?

24 A. Correct.

Q. And that was for a period of about eight

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1 years?

2 A. Approximately.

3 Q. And during that time, you rotated through  
4 various penal institutions?

5 A. Three.

6 Q. And then, in order to become an STIU  
7 officer, you had to make some sort of application?

8 A. Correct.

9 Q. Did you have to take any sort of test?

10 A. I had to interview.

11 Q. So an oral interview?

12 A. Correct.

13 Q. What about any sort of test of proficiency  
14 or knowledge?

15 A. You had to be able to read and write.

16 Q. Okay. Did you have to know any particular  
17 policies and procedures at the New Mexico  
18 Correction's Department?

19 A. Yeah. How the policies and procedures work  
20 in the Department of Corrections is, if there is a  
21 certain area that we're not aware of, or that we have  
22 question about, we can look at policy and procedure  
23 on it. That's how we use it.

24 Q. Okay. But my question is: In order to  
25 become an officer in the Security Threat Intelligence

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1       Unit were you tested on your knowledge of any  
2       specific policy and procedure?

3           A.     Basic knowledge of gangs.

4           Q.     So that's not policy and procedure, though,  
5       is it?

6           A.     No.

7           Q.     My question is directed to policies and  
8       procedures of the New Mexico Corrections Department.

9       Did you have to show any sort of proficiency with  
10      areas of those?

11          A.     No.

12          Q.     And I'm assuming that you have a high  
13      school diploma?

14          A.     Yes, ma'am.

15          Q.     Do you have any formal education above and  
16      beyond high school?

17          A.     Other than the trainings that I've gone to,  
18      no.

19          Q.     Okay. By formal education, I mean like  
20      attending community college; getting an AA  
21      certificate; attending college; attending graduate  
22      school; anything of that nature?

23          A.     No, ma'am.

24          Q.     So apart from your high school diploma, you  
25      have no other formal education?

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1 A. No, ma'am.

2 Q. And the training that you're relying on is  
3 training that you received in the New Mexico  
4 Department of Corrections?

5 A. The training that I -- yes.

6 Q. Okay. And it sounds like you also had some  
7 contact with an individual in California regarding  
8 training, specifically on the Mexican Mafia and  
9 Sureno prison gangs?

10 A. And also the individuals that were our  
11 counterparts within the California Department of  
12 Corrections. Also, other law enforcement agencies.

13 Q. Okay. You've had some contact with them on  
14 the job?

15 A. Yes.

16 Q. And maybe contact at a seminar here and  
17 there?

18 A. Correct.

19 Q. Okay. So those would consist of just  
20 basically personal conversations and sharing  
21 experience?

22 A. Well, I've gone to courses that -- like  
23 narcotics courses. I've gone to gang trainings;  
24 tattoo identification courses; handwriting analysis  
25 courses; hostage negotiation courses. So I've taken

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1       a lot of everything that was offered to me within the  
2       Department of Corrections.

3           Q.     Okay, and --

4           A.     For training.

5           Q.     -- these are courses and training that are  
6       within the New Mexico Department of Corrections?

7           A.     Within the New Mexico Department, across  
8       the United States.

9           Q.     Specifically, do you have any training in  
10      the science of sociology?

11          A.     No. Other than what I've read, no.

12          Q.     Have you done any upper level classwork --  
13      I'm talking about community college, college, or  
14      graduate level class work -- in sociology?

15          A.     No, ma'am.

16          Q.     What about the same with respect to  
17      psychology? Any formal education above high school  
18      in psychology?

19          A.     No, ma'am.

20          Q.     What about anthropology? Have you studied  
21      any anthropology in classes beyond high school?

22          A.     No.

23          Q.     Have you received any training whatsoever  
24      in what motivates people to join gangs, or how gangs  
25      are formed, whether it be prison gangs or street

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1       gangs?

2           A.    Other than interviewing, no.

3           Q.    Other than interviewing prison inmates?

4           A.    Correct.

5           Q.    You don't have any other training or  
6       exposure to ideas about that from professional  
7       organizations?

8           A.    Yes. I was working with an individual, Dr.  
9       Robinson, that worked for the Department of  
10      Corrections, on gangs and gang behavior.

11          Q.    Okay. Is Dr. Robinson a psychologist, or  
12      what kind of doctor is Dr. Robison, do you know?

13          A.    He's a philosopher. He has a Ph.D in  
14      philosophy.

15          Q.    Okay. And he's employed by the New Mexico  
16      Department of Corrections?

17          A.    Yes.

18          Q.    And you had a course from him, or you  
19      interacted with him on occasion?

20          A.    Well, we're collaborating together in  
21      putting together a program for individuals that are  
22      entering our dropout -- gang dropout.

23          Q.    Okay. So you were working with him to try  
24      to develop some sort of program for people who were  
25      leaving gangs?

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1           A. Yes. To enhance the rate of these  
2 individuals.

3                 For example, California uses a yard, where  
4 their ex-members drop out of prison gangs and they're  
5 put into separate yards like the RPP program. Their  
6 success rate is not that great, because usually gang  
7 members will tend to go back to what they know;  
8 they'll revert back to what they've always practiced.  
9 And that's one of the things that we were trying to  
10 work on with a program that would change that  
11 behavior.

12          Q. Okay. And that was in connection with your  
13 involvement with the RPP Program?

14          A. In the gang unit, the STIU gang unit.

15          Q. Okay. And let me go back. Do you have any  
16 training on gang prevention?

17          A. I think the STIU gang, that's one of our --  
18 one of the things that we try to do is prevent  
19 individuals from joining gangs or staying in gangs.

20          Q. But my question is: Do you have any  
21 training, from either experts or taking courses or  
22 learning the theories behind gang prevention?

23          A. Only what I've read.

24          Q. And what have you read?

25          A. I've read books on -- different books on

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1       gangs. All the way from the inception of gangs when  
2       they first started in the United States. We've  
3       always had them; just in different formats, different  
4       things like that. So I've always tried to keep  
5       myself up to date on the philosophy of gangs and how  
6       gangs were formed.

7                  And the whole idea behind this is to  
8       prevent -- to attempt to prevent any type of  
9       individuals joining gangs.

10                 But other than that, no.

11                 Q. How many books would you say you've read on  
12       this topic, or it sounds like the general topic of  
13       gangs?

14                 A. Oh, quite a few.

15                 Q. How many is "quite a few"?

16                 A. Probably about 20, 25.

17                 Q. Okay. And who are these books written by?  
18       Can you tell me?

19                 A. Right offhand, no, I couldn't tell you.

20                 Q. Were they written by gang members? Were  
21       they written by law enforcement officers?

22                 A. Correct. Some from gang members. For  
23       example, the last one I read was written by an  
24       individual that was -- spent 30 years in the gangs  
25       and got a Ph.D. in sociology, De La Cruz -- and he

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1 testifies as a gang expert. So that's the last one I  
2 read.

3 Q. And you've read books that were written by  
4 law enforcement?

5 A. Correct.

6 Q. And any other type of individual that's  
7 written these books that you've read, these 25 books?

8 A. I can't right offhand remember all the  
9 names of the individuals, so --

10 Q. And I think you indicated on your CV that  
11 you have a certification. You have an FBI  
12 certification in hostage survival crisis negotiation  
13 and Arab culture?

14 A. I studied that for six years.

15 Q. Do you have any other certifications like  
16 that?

17 A. Just certifications where I've attended  
18 classes for narcotics or gang identification, tattoo  
19 identification, graffiti identification.

20 Q. You're talking about, like, certificates  
21 saying you attended a two-hour lecture on something?

22 A. Yeah, 40-hour lecture, 80-hour lecture.

23 Q. Okay. What is the -- well, you haven't  
24 listed it on your CV -- is there some certification  
25 with respect to prison gangs that you have that's

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1 omitted from your CV?

2 A. Other than working in the prison system for  
3 17 years, no.

4 Q. No, okay.

5 And this CV, when did you prepare this, or  
6 was it prepared for you?

7 A. I think I have had it prepared since I went  
8 to court in -- it might have been 2014. But the CV  
9 one, I prepared it probably about six months ago.

10 Q. Did you print it in connection with the  
11 Government's intent to qualify you as a gang expert  
12 in this case?

13 A. Correct.

14 Q. And did you have assistance from the  
15 Government in preparing it?

16 A. No.

17 Q. And you mentioned previously that you  
18 testified in two prior cases before this case; is  
19 that right?

20 A. Correct.

21 Q. And in those cases, were you testifying as  
22 an expert on prison gangs, or were you testifying as  
23 a witness to some fact that happened that was  
relevant in the litigation?

25 A. On the Sureno case, I was testifying as a

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1 witness to the Sureno prison gangs.

2 Q. Okay. And the other case that you  
3 mentioned?

4 A. The other case that I mentioned that -- I  
5 was a witness on an individual, I guess, that was  
6 attempting to -- that filed a habeas to reenter the  
7 SNM active population.

8 Q. And so were you a witness as to the facts  
9 of why he was classified one way or another, that  
10 were at issue in the case?

11 A. Correct.

12 Q. So you'd agree that wasn't an expert  
13 witness?

14 A. Correct.

15 Q. Mr. Martin, have you published any sort of  
16 articles regarding your findings or thoughts about  
17 prison gangs in any sort of journal or magazine or  
18 other type of publication?

19 A. No, ma'am.

20 Q. Have you ever submitted an article that you  
21 prepared regarding your thoughts on prison gangs, or  
22 gangs in general, for submission into a journal or a  
23 magazine?

24 A. No, I have not.

25 Q. Have you prepared any writings regarding

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1 your thoughts, analysis, evaluation of prison gangs?

2 A. To --

3 Q. For public dissemination; not just for

4 placement of New Mexico Department of Corrections?

5 A. I have not, no.

6 Q. And can you tell me what publications, if

7 any, you read on a regular basis to stay abreast of

8 developments in this area of prison gangs?

9 A. Other than going into the internet and  
10 going to different prisons, or speaking to different  
11 individuals that work in different prisons, no,  
12 that's the only thing.

13 Q. Well, let's talk about the internet. So  
14 what you're referring to is, sometimes when you have  
15 a question, you might Google a question and see what  
16 the internet says about the answer?

17 A. No.

18 Q. Oh. How do you use the internet?

19 A. Informational.

20 Q. For what type of information?

21 A. Just to see what different cultures in  
22 gangs are doing in different places.

23 Q. Okay. And how do you find information  
24 about different cultures in gangs on the internet?

25 A. There is different law enforcement web

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1 sites that I will print out. For example, I believe  
2 one is Code 10, or Code 1, that give information  
3 about what's going on in different prisons and the  
4 gang activity, or security threat gangs on the  
5 internet. Whenever I see any of these things,  
6 usually I'll try to contact the individuals for more  
7 information on topics.

8 Q. So are these, like, websites where law  
9 enforcement officers, corrections officers, would  
10 share stories about gangs and information they have  
11 about gangs?

12 A. No. Usually, it's counterparts.

13 Q. Usually it's what?

14 A. Counterparts, like gang unit officers.

15 Q. From different prisons?

16 A. Or different law enforcements, like Las  
17 Cruces, or Albuquerque.

18 Q. Okay.

19 A. The Bernalillo County Sheriff's Department  
20 Gang Unit.

21 Q. Okay. And you regularly visit these  
22 websites?

23 A. No.

24 Q. Code 10 or Code 1?

25 A. No.

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1 Q. Occasionally?

2 A. I have, though.

3 Q. And apart from reading what they say, do  
4 you do anything to validate the veracity of the  
5 information that you obtain from the website?

6 A. Usually, it's the same information we have,  
7 as far as gang culture and gang activity.

8 Q. So with respect to becoming an STIU  
9 officer, what are the requirements, according to the  
10 New Mexico Department of Corrections?

11 A. It's been a long time. You just have to --  
12 you have got be a person that doesn't have any  
13 misconducts, a person of good character.

14 Q. Do you have to be a correctional officer?

15 A. No.

16 Q. So you have to be a person that doesn't  
17 have a history of misconduct. And I think you said  
18 you have to be able to read and write. Are there any  
19 other requirements that you're aware of?

20 A. Probably a basic knowledge of gangs.

21 Q. You said "probably," so is that a  
22 requirement?

23 A. Well, in 2006 -- I'm sure the criteria has  
24 changed now -- but in 2006, when I first started, I  
25 had an application. I applied. I was interviewed by

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1 a panel, and I was picked. And so I did ask that  
2 person: So has the criteria changed now? I don't  
3 know. I've never applied again for --

4 Q. Once you're in, as long as you don't commit  
5 some sort of misconduct, you stay in, or promote out?

6 A. Correct.

7 Q. Now, does the New Mexico Department of  
8 Corrections have --

9 Let me go back for a second. Ms. Armijo  
10 asked you some questions about Security Threat Groups  
11 and disruptive groups?

12 A. Correct.

13 Q. Do those terms have specific definitions?

14 A. They do. They vary a little. I don't know  
15 specifically. I'm not -- I'm not specifically sure  
16 what they say, other than an organized group of three  
17 or more individuals that are -- that compile the same  
18 signs, symbolisms, and conduct criminal activities;  
19 disruptive groups haven't met the same criteria to be  
20 validated -- the disruptive groups haven't met the  
21 same criteria to be validated or certified as  
22 validated groups, STG groups.

23 Q. So is that -- first of all, let me just  
24 make sure I understand what you're saying. Are you  
25 saying that a Security Threat Group and a disruptive

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1 group are defined by the same criteria?

2 A. Other than organization, yes.

3 Q. And is there somewhere in the New Mexico  
4 Department of Corrections' regulations, policies, and  
5 procedures manuals that define specifically what a  
6 Security Threat Group is and what a disruptive group  
7 is?

8 A. Yes.

9 Q. And can you tell me where that is? What's  
10 the policy?

11 A. I couldn't tell you right offhand what the  
12 policy is.

13 Q. Is there something you need to look it up?

14 A. The policies of the New Mexico Corrections  
15 Department, yes.

16 Q. Okay. So you could look that up this  
17 evening, and let us know tomorrow, right?

18 A. I could let you know tomorrow, yes.

19 Q. Okay. And do you know the number, the  
20 chapter that those policies and procedures or  
21 definitions would be located in?

22 A. I don't.

23 Q. And the information that you just gave me  
24 about an organized group of three or more individuals  
25 with a sign or symbol that engage in criminal

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1 activity, is that a paraphrasing or what you can best  
2 remember at this point about how a security threat  
3 group is identified, or is defined?

4 A. I'm paraphrasing.

5 MR. SINDEL: I'm sorry. I can't hear.

6 THE COURT: He's paraphrasing.

7 MR. SINDEL: Thank you.

8 Q. And do you know how the New Mexico  
9 Department of Corrections came up with a definition  
10 of what a Security Threat Group is?

11 A. I'm not sure, ma'am. I know I've seen it  
12 in other prison policies. But a lot of our policies  
13 come from state statutes, so I'm not sure if that's  
14 where it came from.

15 Q. So as you sit here today, you don't know  
16 the origin of that?

17 A. No, ma'am.

18 Q. And did you have anything to do with how  
19 that group, the Security Threat Group was defined?

20 Did you sit in on policy discussions, or --

21 A. I did not.

22 Q. So, by the time you joined the STIU, was  
23 that already something that was defined as a security  
24 threat group versus a disruptive group?

25 A. Yes.

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1           Q. And then I think you were also asked some  
2 questions about the criteria for trying to validate  
3 or attempting to validate a prison inmate as a gang  
4 member. Do you recall those questions?

5           A. To validate an individual as a security  
6 threat group.

7           Q. Yes. I think there was list of criteria.  
8 I'm looking at Exhibit 18. Can you see Exhibit 18,  
9 page 3?

10          A. Yes.

11          Q. Is there a regulation of the New Mexico  
12 Department of Corrections that outlines this list of  
13 criteria as criteria for validating somebody, or  
14 attempting to validate somebody as a gang member?

15          A. That would fall under the STIU policy.

16          Q. Okay. And do you know what policy,  
17 specifically, that is?

18          A. I couldn't say for sure.

19          Q. Can you give us an indication, maybe what  
20 chapter or what section of the policy and procedure  
21 manual that would be in?

22          A. No, that's my weakness there; policy, as  
23 far as numbers. Whenever I look policy up, I usually  
24 go in to the policies that I need. But I don't ever  
25 refer -- I mean, I don't memorize the policy number.

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1           Q. This type of criteria, did you have any  
2 input about how this was developed, as how this would  
3 help you determine whether somebody is a gang member  
4 or not?

5           A. That was before I started STIU.

6           Q. And do you know anything about the  
7 reasoning behind it?

8           A. Well, that would be to establish whether  
9 the individual is a suspected gang member or a  
10 validated gang member.

11          Q. That's the ultimate goal. But I mean, do  
12 you know anything about the reasoning behind it? For  
13 example, why you would consider, say number 8, group  
14 photos?

15          A. I don't.

16          Q. What's the policy behind that?

17          A. I don't.

18          Q. And just as an example, inmates aren't  
19 allowed to have cameras in prison, right?

20          A. Correct.

21          Q. So when photos are taken of inmates in  
22 prison it's with the prison's cooperation?

23          A. Correct.

24          Q. The prison actually facilitates it?

25          A. Correct.

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1 Q. And it's a perk to some inmates to have  
2 pictures to send out to family and friends?

3 A. I believe they have to pay for it.

4 Q. They have to pay for it?

5 A. Correct.

6 Q. But it's a privilege that can be denied if  
7 an inmate is misbehaving, right?

8 A. I'm not sure if that falls into the  
9 category of discipline, that he can't take a picture  
10 or he can take a picture.

11 Q. Okay. Going back to just the idea of  
12 pictures: The prison controls how the picture can be  
13 taken, right?

14 A. At the request of the inmate.

15 Q. And when it can be taken?

16 A. Yes.

17 Q. And who is going to take it?

18 A. Usually, the guy with the camera.

19 Q. And who is permitted in the area where the  
20 photography is going to occur, right?

21 A. I don't know.

22 Q. You don't know how photographs are taken of  
23 prison inmates?

24 A. I would imagine, if individuals want to  
25 take pictures, they would say who they wanted in

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1       their picture and who they wouldn't want in their  
2       picture.

3           Q.     I want to show you an exhibit that's been  
4       marked as Government's Exhibit 23.  This is a picture  
5       that you talked about -- I think Ms. Armijo asked you  
6       some questions about this picture, and whether this  
7       picture had people that were all SNM members.  Do you  
8       recall those questions?

9           A.     Yes.

10          Q.     And I just want to follow up on that for a  
11       second, okay?

12          A.     Okay.

13          Q.     Does the New Mexico Department of  
14       Corrections have a policy of housing people who are  
15       suspected or validated SNM members together in the  
16       same pod?

17          A.     Yes.

18          Q.     And do they do that because they think, if  
19       they do that, people will get along more easily;  
20       there will be less friction?

21          A.     They're segregated because they're a  
22       Security Threat Group.

23          Q.     And so if photo day comes to, say, a pod at  
24       Southern New Mexico Correctional Facility, do you  
25       know whether it's possible for inmates to take photos

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1 with people from other pods?

2 A. I don't know that. But I would speculate  
3 that they're not allowed to.

4 Q. And looking at Government's Exhibit 23, do  
5 you know whether every single individual in that  
6 photograph was housed in the same pod on the day that  
7 picture was taken?

8 A. I couldn't tell you if they were or not.  
9 But I believe they were all in the same pod.

10 Q. Okay. Well -- and if we're talking about  
11 there is rarely a situation where a non-SNM member,  
12 or SNM suspect, would be in a photo with the SNM  
13 members; do you recall that testimony?

14 A. Yes.

15 Q. But that's because SNM members and suspects  
16 are segregated from non-SNM members?

17 A. I believe I was referring to the time that  
18 they were in a population setting with other  
19 individuals that were not SNM members. So that would  
20 have been prior to them being segregated.

21 Q. And what year, to the best of your  
22 recollection, were they segregated?

23 A. 2001, 2002.

24 Q. So any photograph taken of SNM members  
25 after 2001 or 2002, would necessarily have included

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1 more than one person, contain people that the prison,  
2 the New Mexico Department of Corrections believe were  
3 validated SNM members or suspects, just by  
4 definition?

5 A. Are you asking me if -- can you ask me the  
6 question again?

7 Q. What I'm asking you is: Let's just say for  
8 a second, I'm an SNM member, okay, and I'm housed in  
9 an SNM pod, and photo day comes around --

10 A. Right.

11 Q. If I want to get my picture taken with  
12 somebody that's not an SNM member, how am I going to  
13 do that if I can't leave the pod?

14 A. Right. You wouldn't be able to.

15 Q. Okay. So the significance of everybody in  
16 Government's Exhibit 23, being an SNM member or  
17 suspect, is a result, really, of the Department of  
18 Corrections housing policy?

19 A. Correct.

20 Q. Not of individuals' decisions to exclude  
21 others from the photograph?

22 A. Correct.

23 Q. So if I understand your testimony  
24 accurately, one of the duties that an STIU officer  
25 has is to put together these validation packets on

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1 various prison inmates?

2 A. The validation packets.

3 Q. Similar -- so that we're talking about the  
4 same thing -- this Exhibit 18 that Ms. Armijo showed  
5 you regarding Mr. Baca.

6 A. Usually, those validation packets are put  
7 together -- or the packets are put together on gangs  
8 or gang affiliation during their Reception and  
9 Diagnostic Center, when they first enter the prison.

10 There is some occasion where we find an  
11 individual that's gang associated within the prison,  
12 when they've been there maybe a couple of years or so  
13 that would identify them; then, yes, we would start  
14 the packet.

15 Q. Okay. So the majority of the packets would  
16 be put together right as a person enters prison?

17 A. Correct.

18 Q. And so that would not be done by somebody  
19 in the STIU?

20 A. It would be done by STIU.

21 Q. Okay. It would be, but they'd be at the  
22 Reception and Diagnostic Center?

23 A. Correct.

24 Q. And then these packages are then circulated  
25 within the prisons?

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1           A. No, the packet -- the file stays wherever  
2 the inmate is.

3           Q. And people in the STIU office have access  
4 to the file?

5           A. They're secured. But yes. They're in a  
6 secured location within the coordinator's office.

7           Q. So would you have to physically go and look  
8 at the file in the coordinator's office if you wanted  
9 to review it, or is there a computer database as  
10 well?

11          A. You would have to physically go.

12          Q. Physically go?

13          A. Yes.

14          Q. And where are these files kept? What  
15 prison or what coordinator's office?

16          A. Wherever the STIU coordinator is for that  
17 prison, they're kept under his care.

18          Q. So there would be a coordinator's office in  
19 each prison?

20          A. Yes.

21          Q. So the STIU officers from that particular  
22 prison could access the packets?

23          A. Correct.

24          Q. And would you agree with me that the  
25 information in these packages -- well, tell me the

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1 source of the information in a package like this, the  
2 sources?

3 A. What the sources would be?

4 Q. Correct. They'd be, for example, the  
5 inmate -- possibly, the inmate himself, right?

6 A. Um-hum.

7 Q. Correctional officers?

8 A. No. I'm not sure what your question is.

9 Q. Well, I'm asking you, if somebody is  
10 putting together a package like this?

11 A. The STIU is the only ones that put packages  
12 together.

13 Q. And you were an STIU officer, right?

14 A. Correct.

15 Q. So did you put together packages like this?

16 A. I have put packages together.

17 Q. Okay. And so where did you get the  
18 information that you put in this type of validation  
19 package?

20 A. Well, it's -- let's say, for example, that  
21 I found an individual that was self-admitted to be to  
22 me that he was a gang member when I'm interviewing  
23 him --

24 Q. Okay.

25 A. -- then the packet is already -- we already

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1 have packets made. So what we do is we download them  
2 into our file -- I mean to our computers. And then,  
3 once we go talk to the inmate, then we take what we'd  
4 call a questionnaire.

5 If we found if there is already an existing  
6 file for -- let's say, for example, an inmate is  
7 already known to be a gang member, and we found more  
8 information to gang activity, then we would  
9 categorize it in the file where it goes: If it's  
10 photographs, under photographs; if it's tattoos,  
11 under tattoos; if it's other information, under other  
12 information.

13 Q. If it's law enforcement reports, you obtain  
14 copies of those reports?

15 A. Yes.

16 Q. If it's -- I think you talked about, if an  
17 inmate self-admits, there would be a form that would  
18 show that the inmate self-admitted?

19 A. Correct.

20 Q. If it's confidential information from other  
21 inmates, that would be placed in this file?

22 A. Correct.

23 Q. And if it's information from correctional  
24 officers, that would be placed in this file?

25 A. Yes.

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1 Q. And if it's information --

2 A. If it's credible.

3 Q. I want to get to that in a second. But I  
4 want to get an idea first of the kind of information.

5 Oh, if it's intercepted communications,  
6 such as letters, would that be placed in the file?

7 A. Yeah, they could, yes.

8 Q. If it's intercepted communications, such as  
9 telephone calls, what happens with those?

10 A. The telephone calls, we can download them,  
11 a recording of them, and sometimes we'll do bullet  
12 points.

13 Q. Sometimes you'll do bullet points?

14 A. Yes.

15 Q. Like a memo stating: Here is what was  
16 discussed in the phone call?

17 A. Correct.

18 Q. And place that in the file?

19 A. Correct.

20 Q. And then save the actual phone call?

21 A. Yes, on an alert form.

22 Q. So I want to ask you about the regulations  
23 that the New Mexico Department of Corrections has  
24 about putting information into the file, okay?

25 Is there a regulation that says: Before

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1 information can be put in a file it has to be  
2 validated?

3 A. Yes.

4 Q. And can you tell me the number of that  
5 policy and procedure regulation?

6 A. I couldn't.

7 Q. Can you tell me the chapter that's located  
8 in?

9 A. No.

10 Q. Can you tell me the text of the policy or  
11 procedure that requires the validation of  
12 information?

13 A. No. I believe it's under CI policy,  
14 though.

15 Q. So what you're thinking of would be some  
16 effort, or some regulation about validating  
17 information from informants before it's placed in the  
18 file?

19 A. Correct.

20 Q. So that would apply only to that category  
21 of information?

22 A. I'm not sure what your question is.

23 Q. Can you tell me what the policy and  
24 procedure about verifying CI information -- what it  
25 is; what does it require as an STIU officer to do?

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1           A. Well, it depends what it is. For example,  
2 if I have CI information that this individual is  
3 telling me that another inmate is a Sureno, or  
4 whatever gang member, and my question, of course,  
5 would be: How do you know that? And if they say  
6 they've indicated to us that that's where they're  
7 from, that's where they're saying they're from, and  
8 also they have letters and/or symbolism in their  
9 personal property, then to verify, we check the  
10 inmate's property to verify that that's true. And  
11 usually, we'll interview the inmate to find out if  
12 that's true.

13           Usually, inmates that are gang members for  
14 the most part will tell you they're gang members.

15           Q. And so in that scenario you gave me, the  
16 information from the informant would be verified or  
17 corroborated by the inmate's admission, property from  
18 the inmate's cell --

19           A. Correct.

20           Q. -- perhaps the inmate's tattoos?

21           A. Right. Because I couldn't say -- if  
22 somebody came to me and said: This individual is an  
23 SNM member, and I could not corroborate that, I'm not  
24 going to place that guy as an SNM suspect or a  
25 member, because I don't know that to be true.

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1           Q.     Okay. And I understand you're saying you  
2 wouldn't do that. My question is, is there something  
3 in the policy and procedures of how the STIU unit is  
4 supposed to operate that would prohibit someone --

5           A.     That's something that the coordinator  
6 oversees. The STIU coordinator at every prison  
7 oversees that, to make sure that doesn't happen.

8           Q.     To make sure that doesn't happen?

9           A.     Correct.

10          Q.     So that wouldn't be your responsibility as  
11 an officer?

12          A.     No.

13          Q.     It would be the coordinator's  
14 responsibility?

15          A.     Correct.

16          Q.     And my question, I think that I was in the  
17 middle of asking was, is there a specific New Mexico  
18 Department of Corrections regulation that says as an  
19 STIU officer you cannot put confidential information  
20 into an inmate's validation package unless it's  
21 corroborated?

22          A.     I'm not sure it says it that way, but I'm  
23 sure there is a policy on it.

24          Q.     But it's a policy you don't know?

25          A.     It's a policy, most likely, in the STIU

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1 policy.

2 Q. Okay. What is the policy?

3 A. I don't know.

4 Q. And how long have you been working as an  
5 STIU officer?

6 A. Eleven years.

7 Q. I think you were asked some questions  
8 earlier. We talked about adding things to an  
9 inmate's validation package. I think you were asked  
10 some questions earlier about removing things.

11 A. Correct.

12 Q. And first of all, I want to ask you, is  
13 there a Department of Corrections policy or procedure  
14 or regulation that talks about when something has to  
15 be removed from somebody's, quote, "validation  
16 package?

17 A. I believe there is. I believe the inmate  
18 has to request that. If he's not an active gang  
19 member for a certain amount of time, he can request  
20 an investigation into that. And that's how they're  
21 removed, or the individual is -- denounces. But  
22 rarely is that ever done.

23 Q. Well, I just want to go back to what the  
24 process is, if there is a process.

25 A. I'm not sure, because I've never really

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1 seen it done.

2 Q. Okay. You've never removed any?

3 A. I never have, no.

4 Q. And you haven't seen anybody else that  
5 you've worked with remove anything?

6 A. No.

7 Q. And do you know what the regulation or  
8 policy or procedure is for removing something as you  
9 sit here?

10 A. No. No, the reason I don't know, most  
11 likely, is because I've never really had to do that,  
12 so I've never gotten to see what the policy is on  
13 that, or if that is a policy on it.

14 Q. Okay. Is there a policy or procedure or  
15 regulation that allows an inmate to contest  
16 information in this validation package put together  
17 by the Department of Corrections?

18 A. I don't believe there is.

19 Q. And can you tell me, in 2014, who the  
20 administrative coordinator was for STIU at Southern  
21 New Mexico Correctional Facility?

22 A. I believe it was Daniel Blanco.

23 Q. And what about the administrative  
24 coordinator at PNM --

25 A. Adam Vigil.

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1 Q. -- I'm sorry, during that time period?

2 A. Adam Vigil.

3 Q. And are administrative coordinators in the  
4 STIU people that were formerly STIU officers that  
5 then promoted to that position?

6 A. No.

7 Q. Do you know the criteria or the  
8 requirements for somebody to obtain that position?

9 A. No, I don't.

10 Q. During your time as an STIU officer, did  
11 you receive any training or instruction in how to  
12 follow the policies and procedures of the Department  
13 of Corrections, to ensure that you were accurately  
14 and reliably classifying inmates according to the  
15 regulations?

16 A. I'm sure I had some training in that, yes.

17 Q. Okay. Can you tell me when you had  
18 training and how much it was?

19 A. I think I went to the diagnostic and  
20 reception area and learned their procedures on how to  
21 build files. But primarily, that wasn't in my area  
22 or my field of my operation as an STIU officer.  
23 That's primarily something that was done at RDC. So  
24 the fact that, you know, I don't know a whole lot  
25 about the files is because I really don't deal with

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1 them too much, other than review them, or look into  
2 them when I need information from them.

3 Q. You use them for information, right?

4 A. Correct.

5 Q. And you rely on the fact that somebody else  
6 produced them in some sort of hopefully accurate or  
7 credible manner, right?

8 A. Correct.

9 Q. And as part of your -- was your term at the  
10 reception center in learning about building these  
11 files, was that at the beginning of your appointment  
12 as an STIU officer?

13 A. Correct.

14 Q. So 10 years ago?

15 A. About 11 years.

16 Q. Eleven years ago. And that was how long of  
17 a rotation through that diagnostic center did you  
18 have?

19 A. About a day or so.

20 Q. I'm sorry? One day?

21 A. About a day or so.

22 Q. And the regulations that govern the  
23 designation of individuals as gang members, and how  
24 you back that up as a corrections officer, how many  
25 pages of regulations are there in the New Mexico

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1                   Department of Corrections regarding that issue?

2                   A.     I don't know.

3                   Q.     Is it, you know, tens of pages, hundreds of  
4                   pages?

5                   A.     No, not that many. I'm not sure -- let me  
6                   see if I understand your question. Are you asking me  
7                   how many pages are there to build a file?

8                   Q.     No, I'm asking you about the regulations.

9                   You said you spent about a day sort of learning about  
10                  the regulations and how these files are supposed to  
11                  be built, right?

12                  A.     Right.

13                  Q.     So you spent about a day doing that. I'm  
14                  trying to get an idea of how much information you  
15                  were trying to assimilate in that short time period.

16                  A.     Well, the regulations or the procedure  
17                  would be for interviews when an individual comes in,  
18                  and a gang identification, if he offers any details,  
19                  or if he has any more information that would properly  
20                  indicate that he's gang affiliated. Those are all  
21                  things that are entered into. So those are all done  
22                  at the reception.

23                  Again, you're asking me questions that I  
24                  did 11 years ago. So I'm not too familiar with that.  
25                  Usually, with the gang files that we have, they're

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1 already -- they're done.

2 Q. Well, I think what you're telling me is the  
3 way you rely on the files now is you just assume  
4 they're true?

5 A. Well, yeah.

6 Q. And you assume they're true, but you don't  
7 have any -- you don't have any responsibility for  
8 checking the information to make sure they're true?

9 A. No, that's the coordinator's job. He  
10 allotted them.

11 Q. And my question was how many pages are  
12 these regulations that talk about the criteria and  
13 how you're supposed to go about evaluating  
14 information and placing it in these files? Do you  
15 remember? I realize it was 11 years ago, but --

16 A. I think there is a couple of forms there  
17 that indicate to you, the index form that tells you  
18 what goes into the file, and what the procedures are.

19 Q. So it sounds like the answer is "I don't  
20 know" or "I don't remember."

21 A. Correct. I don't remember.

22 THE COURT: Ms. Jacks, let me pause here.  
23 I'd like to try something here. This will require  
24 all of us to work together. I need to let Ms. Bean  
25 rest her fingers for a few minutes before we plow

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1 ahead. I'm not going to go any later than 5:30, but  
2 I'd like to get a little more time in. If I could  
3 get the defendants to stay in place. We're only go  
4 to go to 5:30, stay in place. Let Ms. Bean rest her  
5 fingers just long enough. If counsel want to slip  
6 out and use the restroom or something real quick,  
7 that's fine. We'll take our cue from her. Let's  
8 take a little bit of a break, see how long she takes  
9 to rests her fingers, we'll come back in. If the  
10 defendants can stay here. We'll be done at 5:30 and  
11 get you on the road. All right. Let's try this.  
12 We'll be in recess for a few minutes.

13 (The Court stood in recess.)

14 THE COURT: Let's see if we can get  
15 everybody back in and seated. All right. Everybody  
16 got an attorney? Look around, help your co-defendant  
17 there. Everybody got an attorney? All right.

18 MS. JACKS: We need a witness.

19 THE COURT: All right. Mr. Martin, if  
20 you'll return to the witness box. I'll remind you  
21 you're still under oath.

22 Ms. Jacks, if you want to continue your  
23 cross-examination of Mr. Martin. And thank you, I  
24 appreciate everybody cooperating. We get a little  
25 more work done this afternoon. Ms. Jacks.

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1                   THE COURT: Ms. Jacks.

2                   MS. JACKS: Thanks. I'm going to wait till  
3 he gets seated.

4                   Q. Okay. So, Mr. Martin, I want to move on to  
5 a different subject matter. Because I think after  
6 she talked to you about the validation criteria, Ms.  
7 Armijo asked you if you'd reviewed this document.  
8 And what I'm putting up here is Document 1299, which  
9 is the Government's notice of experts. And I believe  
10 you indicated to her that you had reviewed it.

11                  A. Correct.

12                  Q. And then she asked you: Do you agree with  
13 page 1 through 6 of this document? And I think you  
14 said you did; is that right?

15                  A. Correct.

16                  Q. Can you summarize for me what's on page 1  
17 through 6 of Document 1299 that you agree with?

18                  A. Looking at it now, the only thing I  
19 disagree with is that they put me down as unit  
20 coordinator.

21                  Q. Okay. Wait, so you -- okay, you're looking  
22 at page 1 of the document now, right?

23                  A. Correct.

24                  Q. And you see something on there you disagree  
25 with now?

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1           A. Yes. I haven't read it before. I was the  
2 sergeant of STIU, not unit coordinator. That was an  
3 oversight on my part.

4           Q. Okay. So let me see if I can mark that on  
5 this document. You're looking here on the paragraph  
6 "Proposed Expert Testimony, where it says "Unit  
7 Coordinator Martin"?

8           A. Correct.

9           Q. Now that you're looking at it more  
10 carefully, you're saying that you were actually a  
11 sergeant?

12          A. Correct. I was sergeant, I wasn't the unit  
13 coordinator.

14          Q. Okay. Do you remember what's on the other  
15 pages, the rest of page 1, and pages 2 through 6,  
16 that you testified you agreed with?

17          A. Not without looking at it. Yeah, but I  
18 hadn't read it before. I had an oversight on that.

19          Q. On your title?

20          A. Correct.

21          Q. With respect to this document, and pages 1  
22 through 6 -- first of all, did you write this  
23 document, 1299?

24          A. No, I did not.

25          Q. Did you contribute information to the

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1       Government lawyers so that they could write it?

2       A.     Yes, I did.

3       Q.     Okay. And when did you do that?

4       A.     I'm not sure if it was six months ago or  
5 more or -- I'm not sure. I know that -- I'm not  
6 sure.

7       Q.     Did you give them something in writing or  
8 did you sit down with them and talk about things  
9 verbally? Or how was your contribution made?

10      A.     Yes, I gave them something in writing.

11      Q.     And do you remember what that was?

12      A.     I believe it was a CV that I had written.

13      Q.     Oh, you gave them your CV. But let me be  
14 more specific. With respect to the content of pages  
15 1 through 6, regarding the expert opinions, did you  
16 provide the Government with some sort of input as to  
17 those opinions?

18      A.     I may have.

19      Q.     Well, did you or didn't you?

20      A.     I don't remember. But I know that I had a  
21 general conversation with them about it, yes.

22      Q.     Okay. I want to be very specific. Prior  
23 to this document being produced, did you provide the  
24 Government with anything in writing regarding the  
25 nature of these opinions that are reflected in pages

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1       1 through 6?

2           A.     Did I give them anything in writing to  
3        indicate that I'm an expert?

4           Q.     No, regarding the nature of these expert  
5        opinions that are supposedly contained in pages 1  
6        through 6.

7           A.     I think I wrote them something.

8           Q.     Okay. And my question is: What did you  
9        write them and when did you write it?

10          A.    I don't remember when I wrote it, but I'm  
11        sure I wrote it.

12          Q.    May I see it? Do you have a copy?

13          A.    No.

14          Q.    How did you transmit your writing about  
15        these opinions to the Government? Did you email it?  
16        Did you mail it? Did you hand it to them?

17          A.    I may have emailed them.

18          Q.    So does that mean you did or you didn't?

19          A.    Well, I know we've had conversations,  
20        verbal conversations. So I'm not sure if some of  
21        those verbal conversations are in here or something  
22        that I wrote.

23          Q.    Okay. Well, how could you be sure?

24          A.    If I still have the writings.

25          Q.    In your emails or in your -- on your

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1 computer?

2 A. Right.

3 Q. So that's something you can check for us  
4 tonight, right?

5 A. Yes.

6 Q. And that would help us see what you  
7 actually told the Government and when?

8 A. Correct.

9 Q. Okay. Prior to today, had you reviewed  
10 this Document 1299?

11 A. No, it was not shown to me other than  
12 today.

13 Q. You saw it for the first time today?

14 A. Today or yesterday.

15 Q. And I wanted to start with some of the  
16 first information in it that you testified that you  
17 agreed with. And that's under A. It says that  
18 you're going to testify about the "history, culture,  
19 codes of conduct, methods of operation, and  
20 communication, and the behaviors of the SNM Security  
21 Threat Group."

22 A. Okay.

23 Q. Okay. So my question to you is: How did  
24 you become aware of the history of the SNM?

25 A. Through interviews and -- mainly through

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1 interviews, and also coworkers, when I first started  
2 at the Corrections Department.

3 Q. So your knowledge about the history of the  
4 SNM is through interviews of inmates?

5 A. Of individuals that were original members  
6 of the SNM.

7 Q. Inmates, prison inmates?

8 A. Correct.

9 Q. And in discussions with coworkers in the  
10 STIU unit?

11 A. When I first started Corrections would be  
12 in 1993. Some of the veteran officers had explained  
13 to me some of the history of the SNM. And during my  
14 time in STIU, and through interviews, I've come to  
15 know that -- the history of the SNM.

16 Q. So through word of mouth of other people is  
17 how you've become aware of the history?

18 A. Yes. Corroborated by inmates that were  
19 originators of the SNM, yes.

20 Q. And did you prepare any sort of writings or  
21 memo or contemporaneous notation about these  
22 interviews and conversations as they occurred?

23 A. Yes.

24 Q. And where is that?

25 A. It's property of STIU. I'm no longer in

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1 STIU. But I'm sure they have it.

2 Q. So there is a writing in the STIU that you  
3 prepared regarding the history?

4 A. I'm sure there is.

5 Q. Can you tell us what it was entitled or  
6 when you authored it?

7 A. If I wrote the history of the SNM, it would  
8 be just individual interviews. Those would be  
9 interviews. Also, listening to recorded testimony or  
10 recorded interviews from the -- I believe it was the  
11 Bernalillo County Sheriff's Department interviews  
12 with ex-members that were original members of the  
13 SNM.

14 Q. Let's move on to the second thing, the  
15 culture of the SNM. How is it that you have an  
16 opinion about the culture of the SNM? What  
17 information informs that opinion?

18 A. The same.

19 Q. Interviews with inmates, other officers?

20 A. SNM members.

21 Q. SNM members, and listening to recordings  
22 that other people had made of interviews with  
23 inmates?

24 A. Correct.

25 Q. Okay. The codes of conduct. How is it

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1       that you're able to form some sort of opinion  
2       regarding that?

3           A.     Those, again, with interviews and  
4       documentation on those.

5           Q.     What do you mean "documentation"? I'm  
6       sorry.

7           A.     I've seen documentations of their code of  
8       conduct.

9           Q.     So documentation prepared by alleged SNM  
10      members?

11          A.     Confiscated from SNM members.

12          Q.     And do you have copies of that  
13      documentation?

14          A.     I don't, no.

15          Q.     Can you tell us when you obtained it or  
16      looked at it?

17          A.     I believe, when I was working at Southern  
18      as an STIU officer -- I mean, STIU gang unit officer.

19          Q.     And when did you come into possession of  
20      this documentation, what year?

21          A.     I don't believe I found them. I believe  
22      one of the coworkers found them. And I'm just saying  
23      I witnessed them.

24          Q.     So you looked at them?

25          A.     Yes.

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1 Q. And you don't know where that documentation  
2 is now?

3 A. No. But also with the interviews of  
4 inmates on the code of conduct, to be more specific,  
5 with individuals that have denounced.

6 Q. And just going back to that documentation  
7 do you know where the documentation came from, or how  
8 it was -- came into the possession of a correctional  
9 officer?

10 A. Correctional officer? No, STIU unit.

11 Q. Of an STIU officer?

12 A. I believe during a cell search they may  
13 have found them.

14 Q. Do you know whose cell and when?

15 A. I am not -- I don't remember.

16 Q. Let's go to methods of operation and  
17 communication. Is your opinion about methods of  
18 operation and communication again based on  
19 conversations with inmates and other correctional  
20 officers, reviewing reports?

21 A. Yes, and also individuals that had been  
22 active members that have stated this as well.

23 Q. Well, that would be interviews of inmates,  
24 right?

25 A. Correct.

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1 Q. Or former inmates?

2 A. Former inmates, and also active inmates  
3 that are members of the SNM.

4 Q. Okay. And the behaviors of the SNM, what  
5 informs your opinion as to that?

6 A. Their behaviors is again, interviews, time  
7 and experience, eyewitnessing SNM behaviors.

8 Q. So with respect to that one criteria,  
9 behaviors, you, because you were present in the  
10 prison, actually saw some behavior yourself?

11 A. Right. And also talking to members of the  
12 SNM.

13 Q. Okay. Is there anyplace where you've  
14 compiled these interviews and conversations and  
15 observations that were made into something that you  
16 can reference today, or that somebody else could  
17 reference?

18 A. Depending on what facility I was, those  
19 were always turned in to the coordinator.

20 Q. Do you know where any of that stuff is now?

21 A. I don't.

22 Q. Let's go to the second thing, B, the  
23 specific membership and affiliation of the defendants  
24 and victims in SNM. Is that something that you have  
25 an opinion about?

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1           A.     The specific membership and affiliation?

2           Q.     Correct. I mean, are you -- do you have  
3     some sort of opinion about every defendant seated in  
4     this room, about whether they're members or  
5     affiliates of SNM?

6           A.     Usually, if we have written down  
7     information on individuals and it's in their file,  
8     then, yes, I would have to read that file, and I  
9     would have an opinion, yes.

10          Q.     So what you're saying is -- we were talking  
11     about the validation packet of Mr. Baca as Exhibit  
12     18.

13          A.     Correct.

14          Q.     And what you're saying is that you could  
15     have an opinion about somebody's membership or  
16     affiliation with SNM based on reviewing this file,  
17     and then just telling us what you think the file  
18     says?

19          A.     No. I also have information on what other  
20     individuals have told me --

21          Q.     Okay.

22          A.     -- or what he's told me himself.

23          Q.     I'm sorry? What other individuals have  
24     told you or what the suspected SNM member has told  
25     you himself?

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1           A.     Correct.

2           Q.     Do you have admissions of SNM membership  
3     from every -- do you personally have admissions of  
4     SNM membership from every defendant seated here in  
5     this courtroom?

6           A.     No.

7           Q.     So for any defendant who hasn't personally  
8     admitted to you that they're a member of SNM, your  
9     opinion would be based on your review of these  
10    packages that were prepared regarding validation of  
11    an inmate?

12          A.     Yeah, based on whatever information we have  
13    in our computer system and what's in their file.

14          Q.     Okay. I'm confused, because I thought --  
15    what is different between your, quote, "computer  
16    system" and this validation packet?

17          A.     There is also a classification file kept on  
18    inmates, as far as their court documentation, what  
19    they've done in court, or their history of doing time  
20    in the New Mexico Corrections Department.

21                 Also, our Criminal Management Information  
22    System might have some things that are not contained  
23    within that file as well. So I would have to  
24    research some things on them in order to come up with  
25    a conclusion whether they're an SNM member or not

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1 based on the information that I have that's provided.

2 Q. And are you personally responsible for  
3 inputting information into the CIM system?

4 A. No.

5 Q. And are you personally responsible for  
6 putting together the classification files?

7 A. No.

8 Q. And would you agree with me that those two  
9 sources of information are simply compiling  
10 information from other sources?

11 A. Correct.

12 Q. So would it be your -- or it was your  
13 understanding -- let me just go back.

14 What did you think that you were saying  
15 when you said that you were going to testify or you  
16 were going to -- yeah, testify -- to the specific  
17 membership and affiliation of the defendants and  
18 victims in the SNM? I mean, did you think you were  
19 going to have to go through all those things, and  
20 then research it and come up with a conclusion as to  
21 each person sitting here in court?

22 A. A lot of them I know. A lot of them I've  
23 interviewed before.

24 Q. I think you said you interviewed some, but  
25 not all.

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1           A.     Correct.

2           Q.     So as to the ones that you haven't, was it  
3           your understanding that, in order to formulate some  
4           sort of opinion, you were going to have to review  
5           those things?

6           A.     Correct.

7           Q.     And have you done that before today?

8           A.     No.

9           Q.     So as you sit there right now, you don't  
10          know what your opinion would be as to the specific  
11          membership and affiliation of each defendant in this  
12          courtroom?

13          A.     Correct.

14          Q.     I'm going to go to the next one. This is  
15          page 2, C. The next thing that it's represented  
16          you're going to testify to is, in general, and  
17          specific to the SNM, Security Threat Group sanctions.  
18          I'm just going to go piece by piece.

19          A.     Okay.

20          Q.     So that's something you have an opinion on?

21          A.     Correct.

22          Q.     And can you tell me what does it mean?

23          Security Threat Group sanctions?

24          A.     Sanctions are violations that are broken  
25          within the prison gang, rules that are broken, and

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1 the sanctions that they would get.

2 Q. So, basically, what's being represented  
3 here is that you're prepared to testify in general,  
4 gangs in general, and specifically the SNM, what kind  
5 of sanctions might be imposed if a member violated  
6 some sort of rule, right?

7 A. Correct. Like if he ratted on someone,  
8 pretty much, he would be given the death penalty.

9 Q. And so my question is: What informs or  
10 what's the basis of that opinion? How do you know?

11 A. Through the interviews that I've conducted,  
12 and members, too.

13 Q. And so your opinion would simply be based  
14 on things that other people have told you?

15 A. Right. And there is documentation to  
16 corroborate that that's happened, yes.

17 Q. But there is no requirement that there be  
18 corroboration?

19 A. Well, my time and experience have pretty  
20 much told me that those things are true based on the  
21 interviews that I've done and members that I've  
22 talked to.

23 Q. So any one of the people that you've talked  
24 to or members that you've interviewed, could come in  
25 and testify as to what the Security Threat Group

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1 sanctions are for various misbehaviors?

2 A. I don't know.

3                   THE COURT: Ms. Jacks, I promised the men  
4 that we'd get them out of here at 5:30. Is this a  
5 good place to break?

6 MS. JACKS: That's fine.

7 THE COURT: All right. Be safe. See y'all  
8 tomorrow. I appreciate everybody's hard work.

9 MS. DUNCAN: Your Honor, we have one  
10 housekeeping matter. I would just ask the Court to  
11 caution the witness, since he is on  
12 cross-examination, not to discuss his testimony with  
13 anyone else.

14 THE COURT: All right. Is that agreed to?  
15 All right. Don't discuss your testimony with anybody  
16 else.

17 | (The Court stood in recess.)

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1 C-E-R-T-I-F-I-C-A-T-E  
2  
3 UNITED STATES OF AMERICA  
4 DISTRICT OF NEW MEXICO  
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6  
7 I, Jennifer Bean, FAPR, RDR, CRR, RMR, CCR,  
8 Official Court Reporter for the State of New Mexico,  
9 do hereby certify that the foregoing pages constitute  
10 a true transcript of proceedings had before the said  
11 Court, held in the District of New Mexico, in the  
12 matter therein stated.

13 In testimony whereof, I have hereunto set my  
14 hand on December 6, 2017

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17  
18   
19 Jennifer Bean, FAPR, RMR-RDR-CCR  
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